

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JABBAR COLLINS, : 11-CV-766 (FB)  
Plaintiff, :  
v. :  
THE CITY OF NEW YORK, et al., : Brooklyn, New York  
Defendants. : May 16, 2013

TRANSCRIPT OF CIVIL CAUSE FOR DISCOVERY DISPUTES  
BEFORE THE HONORABLE ROBERT M. LEVY  
UNITED STATES MAGISTRATE JUDGE

## APPEARANCES:

For the Plaintiff: JOEL B. RUDIN, ESQ.  
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For the Defendants: ARTHUR G. LARKIN, ESQ.  
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1 (Proceedings began at 5:01 p.m.)

2 (Conference recorded via telephone - some inaudibility.)

3 THE COURT: This is Docket Number 11-CV-766, Collins  
4 v. City of New York.

5 Will counsel please state their appearances for the  
6 record?

7 MR. RUDIN: Plaintiff Joel Rudin and with me is  
8 Terri Rosenblatt. Good afternoon, Your Honor.

9 MS. ROSENBLATT: Good afternoon, Your Honor.

10 MR. LARKIN: And, Your Honor, for defendants Arthur  
11 Larkin, L-A-R-K-I-N, City Law Department, and with me is  
12 Elizabeth Krasnow, K-R-A-S-N-O-W. Good afternoon.

13 THE COURT: Good afternoon. So why don't we set an  
14 agenda.

15 MR. RUDIN: Your Honor, did the Court receive our  
16 letter earlier today?

17 THE COURT: I have it in front of me although I have  
18 to say it's a busy day and I just finished lunch about two  
19 minutes ago.

20 MR. RUDIN: Well, essentially it has three parts.  
21 The first part is our setting forth what we understand the  
22 defendants have agreed to produce. Mr. Larkin has not had a  
23 chance yet to respond to us, at least he didn't at the time  
24 that we felt we had to send it to the Court. So I was hoping  
25 today that we'll know whether or not the defendants agree that

1 they're going to produce these materials and we're asking the  
2 Court to order the production by a particular date so that we  
3 have clarity about what the obligations are and when they have  
4 to be complied with.

5 The second thing is we have a dispute about  
6 electronically stored information [inaudible] emails that I  
7 think we need to discuss with the Court.

8 The third thing is we received the redacted  
9 privileged documents and we have some concerns about that we'd  
10 like to discuss with the Court.

11 MR. LARKIN: Your Honor, if I may. This is Arthur  
12 Larkin for the City. We've got a rather serious issue to  
13 raise with the Court. Apparently the plaintiff has been  
14 pursuing FOIA requests which were forwarded directly to the  
15 DA's Office including requests during the period of the  
16 discovery stage of the Monell claims, not only requests to the  
17 DA's Office but we just learned today from Mr. Rudin requests  
18 that were made to other City agencies for other material.

19 We demanded in our discovery requests which were  
20 served about 18 or 19 months ago that the plaintiff identify  
21 all FOIA requests and responses made by the plaintiff or  
22 anyone on the plaintiff's behalf concerning the claims in this  
23 case and the response we got was that the plaintiff relies on  
24 his prior disclosures pursuant to Rule 26(a) and the plaintiff  
25 at no time supplemented his discovery responses and we just

1 found out by chance today because our client is a very big  
2 agency and there are multiple -- the FOIA records officers may  
3 not necessarily be communicating with the individuals who are  
4 handling these litigations, we just found out today that the  
5 DA has produced a substantial amount of material to Mr. Rudin  
6 and Mr. Collins pursuant to those FOIA requests and that some  
7 of them were made during -- again, during the period of the  
8 Monell discovery stage.

9 Now, I haven't had an opportunity to figure out what  
10 exactly was demanded through FOIA, what documents Mr. Rudin  
11 has gotten through FOIA already, and I've got some pretty  
12 serious concerns about the fact that there was no supplemental  
13 disclosure made ever and that the only reason that plaintiff's  
14 counsel decided to come clean and acknowledge that this is  
15 what he's been doing for the past several months is that we  
16 found out by chance from our client that requests were made  
17 and then just today literally about an hour before the  
18 conference Mr. Rudin says oh, yes, we even served a FOIA  
19 request on other City agencies as well as the DA's Office.

20 So before we can assess what we're going to agree to  
21 produce here, Your Honor, with respect I would suggest that  
22 plaintiff be directed to send us all FOIA requests made to any  
23 City agency at any time, all documents received in response so  
24 we can see what's already been provided here that we didn't  
25 know about until maybe an hour-and-a-half ago. So I would

1 like to add that item to the agenda and I would suggest  
2 respectfully, Your Honor, that we address that first.

3 MR. RUDIN: Your Honor, may I respond?

4 THE COURT: Yes.

5 MR. RUDIN: 2010 well before -- July of 2010  
6 approximately one month after he was released from prison and  
7 after he had begun working for my offices as a paralegal Mr.  
8 Collins with my knowledge filed a FOIA request for the DA's  
9 Office for a vast array of additional records. When we re --  
10 the first batch of records were received I believe it was  
11 sometime in 2011. This whole chronology has been sent to Mr.  
12 Larkin. Sometime in 2011 when we responded to defendant's  
13 initial discovery requests in I believe it was February of  
14 2012 during the period of the Monell and DA related stay,  
15 there was a request in there for FOIA requests and documents  
16 received pursuant to FOIA requests related to the plaintiff's  
17 claims in the lawsuit.

18 Even though I construe that to mean claims -- the  
19 FOIA requests that were made as part of the pattern of  
20 requests that Mr. Collins made while he was in prison we  
21 provided to the defendants the FOIA requests we had made of  
22 the DA's Office and their additional response which was a  
23 partial response and never heard another word about it from  
24 the defendants.

25 During the summer of 2012 while the stay continued

1 we received a second response whether there was some  
2 [inaudible] back and forth between Mr. Collins or our office  
3 and the DA's Office concerning the sufficiency of the first  
4 response and whether or not they owed any additional records  
5 and in July of 2012 we received additional records.

6 Thereafter, the only thing that's happened between  
7 us and the DA's Office has been correspondence from the DA's  
8 Office offering to provide additional records if payment was  
9 made and we sent payment and they declined to provide the  
10 records because we sent them \$2.00 too much and that's where  
11 things stand with respect to the DA's Office.

12 Interestingly, the second response that we received  
13 in July contains a number of emails on behalf of Mr. Hynes  
14 after the conviction was vacated that we have not received  
15 from the City in any of its responses to our request for  
16 emails. But be that as it may, we are -- we told Mr. Larkin  
17 that we're going to provide that response that we received in  
18 July to him and he'll have that -- we'll be sending that out  
19 tomorrow. I suppose that if his original document request  
20 number 20 that deals with FOIA requesting productions includes  
21 material that we requested since Mr. Collins was released from  
22 prison in order to prepare or to prove the claims in this  
23 litigation as opposed to the claims that he was making while  
24 he was in prison that this would fall within that and  
25 [inaudible] our original response we're prepared to submit

1 that -- to send that to the defendants, and certainly we never  
2 would have relied on any of those documents at any deposition  
3 or at trial without disclosing them. So that's the first  
4 category.

5           Secondly, the City has consistently opposed our  
6 discovery requests on the grounds that they're burdensome,  
7 they have [inaudible] additional material and not produced it.  
8 This has been a very long process. It's like litigating a  
9 case in Bronx Supreme Court where every single time you want  
10 to get anything you have to go to the judge and ask for an  
11 order and then you have to go back and try to enforce the  
12 order after the order has already been issued.

13           So one of the items that we attempted to get from  
14 the City so obviously relevant to this case is the hearings  
15 and the records Malin [Ph.] Commission. The City said that  
16 was too burdensome to produce. So we then filed a -- we've  
17 been filing FOIA requests in order to try to locate and obtain  
18 the record of the Malin Commission hearings and fairly  
19 recently we were able to obtain partial transcripts and we've  
20 been trying to decide whether or not to try to get the rest of  
21 it through subpoena, through discovery, to pursuing our rights  
22 on the FOIA. We haven't decided and we haven't yet decided  
23 whether or not we're going to use that material but that was  
24 another area.

25           And then the third area where we've been trying --

1 FOIA information is with respect to the Eleventh Amendment  
2 defense that the City has implied they may raise in this case  
3 that the activities of the DA's Office in connection with the  
4 Collins prosecution were on behalf of the State of New York as  
5 opposed to the City of New York which raises the question of  
6 whether or not the DA's Office is a city or a state agency  
7 particularly with respect to the functions that are issue with  
8 this case. Rather than make a discovery request of the  
9 defendants and get the predictable response that it's too  
10 burdensome we've attempted through FOIA to get that  
11 information directly from the New York City Council and from  
12 city agencies and thus far we haven't received anything except  
13 that we did receive just within the last few days an email  
14 response indicating that some of those materials are available  
15 online. We haven't been able to find that before and just  
16 yesterday we were able to obtain the material online and we  
17 have sent it to Mr. Larkin, in fact several thousand pages of  
18 material.

19 Those are the three areas and I really don't  
20 understand Mr. Larkin's outrage but in any event that's the  
21 full disclosure and I did indicate to Mr. Larkin in an email  
22 earlier today that in response to his request that we provide  
23 him every FOIA request we've made and every response we  
24 received that I wanted to consider the possibility that some  
25 of that might be work product but I have not asserted a work

1 product privilege at this point and I may not. I just want to  
2 think about it a little bit and certainly I will not use  
3 anything at any deposition or any trial that we haven't  
4 provided to the defendants.

5 MR. LARKIN: Your Honor, that's totally  
6 unsatisfactory from our point of view. First of all, there's  
7 no work product for a FOIA request to a public agency that's  
8 disclosed to a public agency. The notion that there could be  
9 work product in such a request seems to me to be absurd. I'm  
10 not aware of any authority that would remotely support the  
11 assertion of a work product privilege in that context.

12 Second of all, there was some suggestion that Mr.  
13 Rudin has obtained emails already from the DA's Office. I  
14 mean we are attempting now with the DA and his IT people to  
15 figure out how to go about getting or extracting all the  
16 emails going back to 2006. Now, if plaintiff already has some  
17 of this material, if he's been able to get it somehow, isn't  
18 it incumbent upon him to tell us what he has and where he got  
19 it from and when he got it so we're not reinventing the wheel  
20 here. It turns out we do have -- we did obtain from the  
21 District Attorney's Office emails from DA Hine. We're in the  
22 process of looking -- of producing them, looking through them  
23 and producing them and we expect to make a production -- I'm  
24 just going to ask my co-counsel -- probably tomorrow a  
25 substantial number of emails that our IT people at the DA's

1 Office were able to extract.

2                   So I mean to go about discovery this way whether  
3 it's been a specific demand in a FOIA request to conceal them  
4 and then say well, gee, I'm not going to use any of this stuff  
5 at depositions when everybody knows that counsel is going to  
6 read through whatever material he gets, ask questions of  
7 witnesses without showing the witness the documents and then  
8 take the position that the documents are impeaching and hand  
9 them to the witness without showing them to us in advance.

10                  MR. RUDIN: Your Honor --

11                  MR. LARKIN: Excuse me, Counsel. I'm not finished.  
12 I just -- I think, Your Honor, that for Mr. Rudin to get on  
13 his high horse complaining about being in Bronx Supreme Court  
14 when he's been running around filing FOIA requests, not  
15 disclosing to us either the request of what he's gotten in  
16 response is just outrageous. He's not being straight up with  
17 us.

18                  THE COURT: Let me just jump in here because we don't  
19 have all evening to do this and I understand you've got a lot  
20 on your minds. Let me just start. I think that we should  
21 make this as a rule that in our arguments here before the  
22 Court you will not use adjectives.

23                  MR. LARKIN: I'm sorry, Your Honor.

24                  THE COURT: Both sides. Don't use adjectives. As  
25 [inaudible] said to get to the truth you delete the

1       adjectives. I just -- I think both of you just need to focus  
2       on what's necessary here.

3                   So, Mr. Rudin, I think what Mr. Larkin is saying is  
4       he wants number one, just to make sure that his burden is  
5       eased in de -- in trying to get you the documents you want  
6       and need. You need to know what you have already. Can you --  
7       do you have the FOIA documents that you received in --  
8       segregated in a way that he could actually come over and  
9       inspect them and see or you could find some other way to  
10      disclose what he already -- what you already have?

11                  MR. RUDIN: It's much easier than that. There were  
12      two masters of documents we received from the DA's Office  
13      [inaudible] to him a year-and-a-half, two years ago and he  
14      never raised an issue about it and the second one is the one  
15      from July 2012 which I told him that he's -- we're sending out  
16      tomorrow so we'll send it by FedEx. He'll have it by Saturday  
17      or Monday. Then there are the materials we asked for from the  
18      City Council. We spent a great deal of time trying to locate  
19      this material. Rather than ask Mr. Larkin to produce it  
20      because we're trying to reduce his burden and we've obtained  
21      that material now from a website. It's the hearing  
22      transcripts from City Council hearings about funding the DA's  
23      Offices for the last 13 years. We today sent out a CD that  
24      had eight or 9,000 pages of material that Mr. Larkin I believe  
25      will have tomorrow because it was FedEx'd. Terri, was it

1 FedEx'd?

2 MS. ROSENBLATT: It was sent by regular mail.

3 MR. RUDIN: It was sent by regular mail so they'll  
4 have it by Monday if not tomorrow.

5 And the third item is the Malin Commission materials  
6 where I believe we received a partial transcript of the Malin  
7 Commission hearings. The office where we obtained this from  
8 after a tremendous amount -- and this is what we asked the  
9 City to produce and they've declined -- after a tremendous  
10 amount of digging we found out where it was and they permitted  
11 us to copy of what's being transcribed. Apparently the entire  
12 proceeding was not transcribed back in 1994 when it was  
13 conducted. So there are tapes that are un-transcribed. We  
14 haven't figured out yet what to do about that and there are a  
15 number of exhibits that have not been produced to us and we  
16 haven't figured out what to do about that.

17 I will send to Mr. Larkin the transcript that we  
18 received and any -- I don't think there are any other  
19 materials. Whatever we received concerning the Malin  
20 Commission I'll send to Mr. Larkin. I'll double check that we  
21 haven't received any other responses in response to our FOIA  
22 request and I'll certainly let Mr. Larkin know if there's any  
23 issue.

24 THE COURT: So can we say the issue is closed, that  
25 Mr. Rudin, you'll be providing all the FOIA documents to the

1 City?

2 MR. RUDIN: Yes.

3 MR. LARKIN: The only concern that I have, Your  
4 Honor, is that plaintiff takes the position that they produced  
5 an initial set of documents when they provided responses to  
6 our initial discovery demands. It appears to be that those  
7 documents were buried among a 20 or 30,000 page or 20,000 page  
8 production and that the interrogatory responses did not  
9 identify the documents. Now, plaintiff is at the same time  
10 taking the position that the City has the burden of searching  
11 through its own production to identify certain documents that  
12 we know we produced but that there's an equal burden on both  
13 sides to go through the production and identify the documents.

14 So it seems to me that either both sides ought to  
15 have the burden -- well, it seems to me, Your Honor, that  
16 neither side ought to have the burden of going through a long  
17 production, a big document production like the ones that we  
18 have in this case and identifying documents for the other  
19 side. Plaintiff didn't want to do that with respect to this  
20 FOIA request even though we served a written response.  
21 There's no indication of a written response that documents  
22 were produced although they advised us that they were  
23 produced.

24 So it just seems to me that the burdens ought to be  
25 fair on both sides and all I'm saying is I would prefer not to

1 have to search through our productions to identify documents  
2 since it appears that plaintiff doesn't want to undertake that  
3 burden either.

4 MR. RUDIN: Your Honor, when we [inaudible] our  
5 initial discovery disclosures to the other side we provided a  
6 detailed index of everything that we were providing and then  
7 when they provided their 35,000 pages of discovery to us which  
8 included about 25 to 30,000 pages of transcripts and motions  
9 that we said we didn't want but they insisted on producing and  
10 we asked them to specify where things were they refused.  
11 Thereafter when we responded -- then when we responded to  
12 their document demands we stopped doing what we had been doing  
13 before but we did say that in answer to their interrogatory  
14 number 20 that we relied on our prior disclosures pursuant to  
15 Rule 26(a) as well as the material disclosed herein.

16 If they wanted us to specifically identify this  
17 material or anything they could have asked and every time in  
18 the course of this case when they've asked we complied with  
19 that. So I really don't understand what Mr. Larkin just said  
20 but in any event earlier today when he raised this issue I  
21 sent him an email that contains the specific pages of our  
22 initial document production which has the FOIA material from  
23 the DA's Office.

24 THE COURT: So let's talk about going forward. How  
25 do you want to handle this? Will each side identify for the

1 other where the materials are in the voluminous requests or do  
2 you want to or not? Mr. Larkin, what do you say?

3 MR. LARKIN: My view is that if it can be easily done  
4 without an undue burden then that's fine but if the burden is  
5 going to be the same on both sides it seems to me that the  
6 side that wants the documents ought to be the side that does  
7 the searching.

8 THE COURT: Mr. Rudin.

9 MR. RUDIN: Your Honor, from the beginning of this  
10 case we have been willing to do that and we're willing to do  
11 it now. I think now that the materials that are still at  
12 issue are pretty -- are much more targeted and specific. So I  
13 don't really think it's going to be a problem but we're always  
14 willing to do that.

15 THE COURT: So I think you can agree on that then.

16 I want to zoom down to your agreement, what you've  
17 agreed to produce. I guess that's item number one on Mr.  
18 Rudin's letter today. I don't know, Mr. Larkin, if you've had  
19 an opportunity to read the letter.

20 MR. LARKIN: Okay. I'm going to let Ms. Krasnow  
21 address some of these matters.

22 THE COURT: Okay.

23 MS. KRASNOW: Your Honor, what we had agreed to  
24 produce were the same items from the personnel file that we  
25 had previously produced [inaudible] involved in [inaudible]

1 actual [inaudible]. So when it says complete personnel file  
2 that's not entirely what we agreed to produce. The personnel  
3 file contains a lot of personal information such as somebody  
4 went on medical leave.

5 THE COURT: Yes.

6 MS. KRASNOW: Items like that which we have been  
7 pulling but we have been producing all the records that's in  
8 the personnel files. There are salaries, positions,  
9 promotions, et cetera and plaintiff had no objection to the  
10 items that we had previously [inaudible] operate under  
11 [inaudible] those same items for the ADAs that I would extract  
12 from their personnel records.

13 THE COURT: The last sentence of that paragraph says  
14 plaintiff has agreed to reasonable redactions to protect  
15 private [inaudible].

16 MS. KRASNOW: Exactly. But I just didn't want there  
17 to be any confusion [inaudible] complete personnel file but  
18 there is a lot of medical information in the file.

19 THE COURT: So, Mr. Rudin, are we agreed on that?

20 MR. RUDIN: Your Honor, just to be clear. The two  
21 categories that Ms. Krasnow just mentioned I just want to make  
22 sure that she's including one. One is evaluations and the  
23 other is letters of criticism or accommodation such as letters  
24 from the District Attorney commending an employee.

25 MS. KRASNOW: Yes, I have included those in the past

1 and I will continue to include them.

2 MR. RUDIN: And you'll include the evaluations?

3 MS. KRASNOW: Of course.

4 MR. RUDIN: Then we're in agreement.

5 THE COURT: Those in fact were actually produced as  
6 part of the in camera review and I believe even before the in  
7 camera was refined onto the last few documents the City had  
8 agreed to produce those documents.

9 MS. KRASNOW: That's correct.

10 THE COURT: Number two, materials from case files, is  
11 that agreed? If there's no dispute you can simply just say  
12 yes, you agree to the paragraph.

13 MR. LARKIN: Yes, Your Honor. I think we are -- I  
14 think we've asked for all of it but -- bear with me just a  
15 moment. I'm sorry. I just want to make sure. Grant and  
16 Vecchio were sealed. So right. What the Court had directed  
17 last time is once the plaintiff obtains the  
18 release --

19 THE COURT: Right.

20 MR. LARKIN: -- and we see what the scope of the  
21 release is we can then take the release and move forward.  
22 It's hard for us to do anything until we know what those  
23 individuals are going to authorize.

24 THE COURT: Is that agreed? Mr. Rudin, do you agree?

25 MR. RUDIN: Yes. I don't want to fight over this if

1 I can get the releases. If I can't get the releases then  
2 we'll have to deal with it but hopefully we'll have the  
3 releases.

4 THE COURT: Good. Number three, grand jury minutes.

5 MR. LARKIN: Yes, Your Honor. We've produced the  
6 minutes that we have in our file. I would take one more quick  
7 run through to see if there's anything else. If there's  
8 nothing else then we don't have any other minutes that exist  
9 as of today. One of the -- I suppose one could order them  
10 from the reporters if we could identify the reporters but I  
11 don't know if we can at this point because it's a grand jury  
12 proceeding from 1994.

13 MR. RUDIN: One or two of the transcripts, Your  
14 Honor, broke off in the middle and it's clear that something  
15 was left out. They may not have --

16 MR. LARKIN: I can represent, Your Honor, that we  
17 have in our office here at 100 Church Street every page of  
18 material that the DA has in its files or had in its files. So  
19 to the extent that they had grand jury minutes we have them  
20 and as I say I'll take one more quick run through and see if  
21 there's any other sort of stray pages or any other minutes  
22 that are in there but they were all in one place and I did  
23 produce everything that was there. So it looks as though  
24 everything that the DA has the plaintiffs have.

25 THE COURT: All right. [Inaudible] ADAs, agreed?

1 MR. LARKIN: Yes, Your Honor.

2 THE COURT: Casey DAO printing materials, any  
3 dispute?

4 MS. KRASNOW: No.

5 THE COURT: How about the next page, any dispute on  
6 the page over 1, 2, 3, 4?

7 MS. KRASNOW: With respect to 1, Your Honor, I think  
8 that's one of those items where it's included in our  
9 production but then the issue is who's going to be doing the  
10 search for it.

11 MR. RUDIN: Well, we believe we've searched for it  
12 carefully through their production and we only received DI  
13 logs I believe -- Terri, maybe --

14 MS. ROSENBLATT: Your Honor, we received in discovery  
15 both [inaudible - fire engines] production of it was  
16 [inaudible] in July of 1993 but the entries that seem to  
17 correspond with that book begin after March 1<sup>st</sup> of 1995. So  
18 we're just asking that the defendants go back to that book  
19 [inaudible] produce January 1<sup>st</sup> through I guess the end of  
20 February of 1995.

21 MR. LARKIN: I suppose we could look through the  
22 books and see if there are any entries related to this case.  
23 I don't know that there are any. I think the rationale for  
24 gathering starting with the March 1 date is that most likely  
25 when DI's got involved in the case.

1                   MR. RUDIN: Mr. Larkin, that's just not true. The  
2 DI's [inaudible] beginning of at least January 26, 1995 when  
3 they were trying to bring in Mr. O'Lever for the interview.  
4 Then they were involved after February trying to bringing him  
5 in. They were involved in bringing in Mr. Santos and  
6 supposedly Santos was subpoenaed by the office. Mayor and  
7 Bonder are two of the original defendants in this case brought  
8 Santos to the office where he met with -- indisputably he met  
9 with Mr. Vecchione on February 23<sup>rd</sup> of '95 and then Vecchione  
10 obtained a material witness order at which point they were  
11 transported to a jail and then they were brought back and they  
12 were held in a hotel custody.

13                   MR. LARKIN: That's the March 1<sup>st</sup>.

14                   MR. RUDIN: No, no. Well, [inaudible] custody was  
15 March 2<sup>nd</sup> but everything else happened in February. The trip  
16 to Puerto Rico and the efforts to locate Diaz before the trip  
17 occurred in February.

18                   There's also a broader issue which is that we would  
19 like all the memo book entries -- I take that back. This  
20 request related to the [inaudible] prosecution. So basically  
21 very significant activity happened in January or February  
22 which goes directly to the issue of whether or not the DA's  
23 Office was aware beyond the deceased ADA Posner was aware that  
24 Oliva had recanted, was not cooperating and issues relating to  
25 Diaz and Santos as well. The critical issue [inaudible].

1                   MR. LARKIN: Your Honor, there's no question that  
2 legal wasn't cooperating. Vecchione made that representation  
3 in open court the date that Oliva testify but in any event we  
4 will -- there's no disagreement about 1. I'm sorry to belabor  
5 this. We will look for the book. If they still have the book  
6 by all means we'll produce any entries relate to this case.

7                   THE COURT: Got it.

8                   MR. RUDIN: Your Honor, I misspoke. Number 1 is not  
9 limited to this case. It's number 2 that's limited to this  
10 case. Number 1 is significant because besides this case the  
11 detective investigators were involved in illegally bringing in  
12 witnesses on material witness orders to the DA's Office or  
13 bringing them to hotels to be held in custody we think  
14 illegally and we would just -- we would just like to see the  
15 log entries for this limited time period, January to March,  
16 not only for the Collins case but also because it may have  
17 leads to other information that may be relevant to the case.

18                   Number 2 we limit it to memo book entries. We limit  
19 it to this prosecution.

20                   THE COURT: I think Mr. Larkin said he didn't  
21 disagree on number 1.

22                   MR. LARKIN: I mean we'll look and see. We will  
23 retrieve the book, Your Honor, and look and see what the  
24 entries show. I assume that these are all business related  
25 tasks that the DI's were performing. So --

1                   THE COURT: 2, no problem?

2                   MS. KRASNOW: With respect to number 2, Your Honor, I  
3 believe Mr. Min was informed during [inaudible] that these  
4 investigators did not keep memo books but we will go back and  
5 verify that.

6                   MR. RUDIN: No, Your Honor. They definitely kept  
7 memo books. Whether or not the memo books still exist it  
8 was -- I've been involved with this issue with the Brooklyn  
9 DA's Office for 15 years and I litigated a case in 1990s, the  
10 Brian Boch case where the DI's, several DI's testified and  
11 they produced their memo books which -- and I've seen  
12 references to memo books in deposition testimony of other  
13 DI's.

14                  THE COURT: Well, I think Ms. Krasnow said they'll  
15 check again.

16                  MR. LARKIN: The reference -- in this instance we  
17 don't have the memo books. We've already searched for them  
18 and the representations made in habeas proceedings that they  
19 don't exist any more. So whether or not other DI's kept memo  
20 books in other cases if that may be the case but here we don't  
21 have -- there's nothing to produce in response to number 2.  
22 So that's the response.

23                  MR. RUDIN: The practice in the office sometimes was  
24 the DI's could take the memo books home and keep them at home.  
25 There's been testimony to that effect. So at least with

1 respect to the Mayor and Bonder who are both going to be  
2 deposed I would ask that they be asked whether or not they  
3 have their memo books at home if they're not in the office.

4 MR. LARKIN: Certainly. No objection doing that,  
5 Your Honor.

6 MR. RUDIN: Okay. We're in agreement.

7 THE COURT: Okay.

8 MR. LARKIN: We will ask the individuals if they  
9 happen to have their memo books and I doubt they do but we  
10 will ask.

11 THE COURT: Number 3, agreed?

12 MS. KRASNOW: Yes.

13 MR. LARKIN: Number 3 is agreed, Your Honor, yes.

14 THE COURT: Number 4.

15 MR. LARKIN: Number 4 is not agreed to. We can't  
16 turn over the names of individuals that were in protective  
17 custody or the underlying records. It's just -- the reason  
18 that these individuals were in protective custody was for  
19 their own safety and I realize that it is a long time ago but  
20 the client has some serious concerns about this. We did,  
21 however, learn from the client the number of witnesses who  
22 were subject to material witness orders going back to '92,  
23 '93, '94 and '95 and we're going to supply that information.  
24 So I do know that if, for example -- I believe there were four  
25 in 1995 -- I'm sorry. I don't remember the numbers. We'll

1 supply the number of individuals in an interrogatory response.  
2 The identities and the underlying records is a major issue  
3 here.

4 THE COURT: Mr. Rudin, will that work at least for  
5 now?

6 MR. RUDIN: Not really. I understand the concern.  
7 On the other hand the issue here is whether or not there was a  
8 custom or practice to hold material witnesses and other  
9 witnesses illegally in the arms -- under the -- the custody of  
10 detective investigators at the DA's Office they had a formal  
11 custody hotel program and I did see a memorandum which I  
12 provided to defendants from 1993 from the chief investigator,  
13 the office about holding individuals in voluntary or  
14 involuntary custody and we're very concerned -- we need to  
15 prove that the practice was to hold a witness against their  
16 will and my understanding is that their position has been or  
17 may be that when they held witnesses in a hotel under armed  
18 guard and were there voluntarily and in order to refute that  
19 we may need to interview some of these individuals and produce  
20 evidence that that was not the case. I don't know how to get  
21 at that unless we have the information about which individuals  
22 were held in hotel custody.

23 If they have -- if they'll acknowledge that they had  
24 a practice of holding some individuals against their will in  
25 hotels then the issue -- then I guess we won't have a proof

1 problem but I don't know what their position is going to be  
2 about that.

3 MR. LARKIN: Clearly we're not going to agree that we  
4 held -- that the DA had a practice of holding individuals  
5 against their will. I mean that's not what the used material  
6 witness warrant for. The number -- I'm sorry.

7 THE COURT: I was going to say I've signed material  
8 witness forms here where people were held against their will.

9 MR. LARKIN: I mean if the Court signs an order that  
10 allows the DA to take custody of an individual -- I guess it  
11 authorizes the arrest of an individual who has information  
12 about a case and who is unwilling to testify. So by its very  
13 nature there's some compulsion with respect to the material  
14 witness -- an issuance of a material witness warrant. So I  
15 mean if a judge -- as a matter of law, Your Honor, if a judge  
16 signs an order that allows the district attorney to take  
17 custody of an individual or commits that person to civil jail  
18 that's the end of it. There's nothing unlawful about the way  
19 that -- there's nothing unlawful about that practice.

20 THE COURT: Right. But the reason I said what I said  
21 was perhaps that's a way to get at this without getting at the  
22 names at least on level one. Is there a way to disclose the  
23 number of people that were held as material witnesses in hotel  
24 custody and number two, whether or not there were court orders  
25 authorizing that?

1                   MR. RUDIN: I think we determined that. If we know  
2 the number of people that were held in protective custody.  
3 Now that's not the problem because see, what you're referring  
4 to as protective custody we see differently. At least in some  
5 of those cases that -- the district attorney classified it as  
6 protective custody when in fact they were averted from court  
7 or they were held involun -- they were basically told you are  
8 going to go to jail or we're going to hold you in a hotel and  
9 they chose the hotel and then once they went to the hotel they  
10 weren't allowed phone calls and weren't allowed visits and  
11 they were in prison until they testified. We have a different  
12 view of what that means. I don't know how to get at that  
13 unless we were able to speak to some of those people.

14                   MR. LARKIN: Well, Your Honor, in each of those cases  
15 though if the courts signed orders that permitted detective  
16 investigators to take custody of individuals and individuals  
17 were then produced in court and testified as witnesses in some  
18 of these cases, the court presumably authorized whatever  
19 conduct or whatever -- authorized whatever procedures were  
20 then used to make the witness available to testify. So what's  
21 the -- I don't understand.

22                   THE COURT: That's what I'm saying. That's what I'm  
23 saying. Can you disclose since you have the number of people  
24 that were kept in court protective custody --

25                   MR. LARKIN: Yes, Your Honor.

1                   THE COURT: Can you disclose how -- the number for  
2 whom there were actually court orders and then we can see  
3 whether that's the entire universe or whether there's just a  
4 small number and then we can deal with that?

5                   MR. LARKIN: Yes, Your Honor. We'll make a further  
6 inquiry of our client and find out if we can get that  
7 information.

8                   THE COURT: Because I think that goes towards what  
9 Mr. Rudin is looking for and then perhaps we can find a way to  
10 deal with it.

11                  MR. RUDIN: There's clearly a distinction between a  
12 material witness order that results in somebody being brought  
13 to court and then having the court order the person jailed in  
14 a jail for being recalcitrant versus a material witness order  
15 that results in detectives picking a person up, bringing him  
16 to the DA's Office and then having him held against -- held in  
17 a hotel under armed guard not being permitted to leave.  
18 That's what we're interested in. Not the former but the  
19 latter.

20                  THE COURT: But the latter actually I've seen the  
21 latter happen through court order as well. So I know you're  
22 looking at it happening without a court order but I think --

23                  MR. RUDIN: A court order allowing someone to be held  
24 in a --

25                  THE COURT: In a hotel.

1 MR. RUDIN: -- [inaudible] DA's Office.

2 THE COURT: No, not the DA's Office. The U.S.  
3 Attorney's Office or the FBI.

4 MR. RUDIN: That's exactly right. The Court is  
5 correct. You don't need me to say that but obviously what  
6 happens is sometimes they go out and find these guys at two,  
7 three in the morning and there's no judge available to hear  
8 any application that that individual might want to make. So  
9 of course they're taken into custody but the order authorizes  
10 that.

11 MR. LARKIN: The additional order that individual to  
12 be held --

13 THE COURT: Anyway.

14 MR. RUDIN: -- [inaudible] in a hotel I wonder about  
15 the legality of that under state law but at least there's a  
16 court order. I'm looking principally at cases where the court  
17 order is to bring the individual forthwith to court where he  
18 has a full range of rights under the material witness statute  
19 [inaudible] -- they're actually a lot broader than the federal  
20 court.

21 THE COURT: Probably.

22 MR. RUDIN: [Inaudible] person ends up being held in  
23 a hotel as a prisoner and [inaudible] district attorney's  
24 office running a private jail. That's our concern.

25 THE COURT: I understand what the point is. So can

1 we start at least just by having defendants disclose how many  
2 were held pursuant to a court order --

3 MR. RUDIN: Yes, Your Honor.

4 THE COURT: -- and then work from there?

5 MR. RUDIN: Yes, Your Honor.

6 THE COURT: Documents to be produced on or before  
7 June 28<sup>th</sup>, number one, is that okay?

8 MR. LARKIN: Yes, we agreed to that.

9 THE COURT: Electronically stored information.

10 MR. LARKIN: All right. Here's the concern that we  
11 have. What we've learned, Your Honor -- let me back up. What  
12 we have ready to produce to plaintiff are a substantial number  
13 of emails from various individuals at the DA's Office for the  
14 period during which the habeas proceeding took place which is  
15 May, June of 2010 and we also have additional emails from Lee  
16 Farrell from a period April 2010. So those emails were easy  
17 to locate and to extract because I believe that the same  
18 system that the DA uses now they were using at that time.

19 But plaintiff has asked for emails that go back to  
20 2006 and I believe has narrowed the request somewhat but in  
21 the course of narrowing it -- narrowing the time frame  
22 plaintiff has expanded a number of people whose emails he  
23 wanted searched. So the problem we have is that if you look  
24 at just the old requests before it was narrowed down and -- I  
25 guess now we're [inaudible]. The old requests in the document

1 demand -- we did confer with our client [inaudible] about that  
2 and it's going to require about 200 man hours at least, about  
3 200 man hours to just extract the material and convert it into  
4 some format in which it needs to be reviewed and produced.  
5 It's going to take an individual, an IT person overtime to do  
6 this because they would be taken away from their entire --  
7 from their regular job duties for a period of several weeks  
8 otherwise and the district attorney needs these folks to help  
9 the office run.

10                   So it would have to be done on overtime. It would  
11 probably take about, I don't know, 13 weeks, 13 to 15 weeks  
12 because three hours of overtime a day which is a concern  
13 [inaudible] according to the information that we got and the  
14 terminology is [inaudible] restored, a restored [inaudible] go  
15 back, look at all the old stuff, extract it and then restore  
16 it into some form in which it can be reviewed and then  
17 produced. So it is a burdensome task.

18                   We're trying based on the narrowing of the request I  
19 guess in some sense to get some more information as to how  
20 burdensome this is going to be but just to give the Court a  
21 sense of what we're looking at it's -- this is not an easy  
22 task. I mean the overtime costs are going to be significant  
23 and the burden is significant. The drain on the office is  
24 significant. I don't know if they can find an IT person to do  
25 this for three hours a day for 10, 12 or 13 straight weeks to

1 extract all this stuff. So we've given the emails over for  
2 the recent time period. Our view at this point is that the  
3 burden of this discovery is going to outweigh the benefit it  
4 seems.

5 MR. RUDIN: Your Honor, may I -- are you finished,  
6 Mr. Larkin?

7 MR. LARKIN: Yes.

8 MR. RUDIN: Your Honor, may I respond?

9 THE COURT: Yes.

10 MR. RUDIN: We made our initial document demand in --  
11 let me just get the date here. In August 2, 2011 and request  
12 number 2 is for emails for 19 or 20 individuals. 19  
13 individuals plus their public information and press office  
14 going back to the beginning of Mr. Collins' case in 1994 until  
15 the present. Then in February after Judge Block's order on  
16 the motion to dismiss we -- in our second document request we  
17 asked for compliance with the request for emails as well as  
18 other items that we had asked for a year-and-a-half earlier  
19 where the compliance had been stayed because of the stay that  
20 was in place.

21 We then had a number of conversations with defense  
22 counsel where we raised the issue of emails and we continually  
23 asked if we could have a conversation with their IT specialist  
24 in order to try to narrow the request if we could and to  
25 obtain compliance in the most economically feasible and time

1 feasible way possible and that was always declined.

2                   Then several weeks ago defense counsel began to say  
3 that they would comply with the email requests and that we  
4 would have compliance shortly and that we would have  
5 compliance at least as to Ms. Farrell before our deposition we  
6 had been scheduled for today but has been postponed. Only --  
7 I believe it was [inaudible] evening or yesterday -- I think  
8 was Tuesday evening did we learn for the first time that there  
9 was this issue and that -- and then we learned that for some  
10 reason that the defense narrowed their compliance without  
11 telling us concerning emails generally in the DA's Office to  
12 May and June of 2010 which is about a year-and-a-half after  
13 the habeas proceeding was filed and several months after Judge  
14 Irizarry had a telephone conference where she made clear that  
15 there was going to be a hearing. There would have to be  
16 discovery and the DA's Office at that point have to start  
17 collecting material, disclosing material that they had refused  
18 to disclose four years earlier [inaudible] litigation. So  
19 they -- generally speaking they decided to only disclose  
20 material from May until I believe the middle of June of 2010  
21 and as for Ms. Farrell for some reason they artificially  
22 limited what they were going to disclose to April of 2010 I  
23 gather to some point in June without telling us. We only find  
24 this out late Tuesday or early Wednesday.

25                   So to say -- I understand -- so then we continued --

1 as late as yesterday we continued to propose that we meet in  
2 an informal off the record conversation with their IT person  
3 to try to get a sense of what it is that's so burdensome and  
4 see if we can narrow our request in a way that will actually  
5 help him or her and that request we made for a conference has  
6 repeatedly been refused. So yesterday in an effort to try to  
7 help this process we attempted to narrow what we were  
8 requesting both as to time and as to number of people and it's  
9 not correct that we've expanded the number of people.

10           We resisted from 1994 and [inaudible] start at March  
11 15, 2006 which is the day that we filed Mr. Collins' 440  
12 motion. It continued to January 10, 2007 which is when Ms.  
13 Farrell submitted her last formal response to the court except  
14 that in reviewing discovery in preparation for her deposition  
15 I saw that she -- there was a lot of activity through late  
16 January into February. So I'd like to modify that and make it  
17 March 15, 2006 until March -- I'm sorry. March 15, 2006 until  
18 March 31, 2007, about one year, and then from November 25,  
19 2009 which is when Judge Irizarry -- which was when we filed  
20 our motion to amend the habeas petition after we obtained --  
21 after Mr. Collins obtained through a FOIA request a material  
22 witness order of Mr. Santos which -- so we filed a motion to  
23 amend the petition. It was after that that things heated up  
24 and we had a lot of proceedings in court with Judge Irizarry.  
25 So from November 25<sup>th</sup> 2009 to the present as to certain

1 individuals. The number of -- we gave different lists of  
2 individuals for the first time period and the second and each  
3 one of them is about six or seven individuals at the most. So  
4 we've cut out a lot of people who we think would be relevant  
5 but we're trying to be pragmatic. We're still -- I think it  
6 would make sense to meet with their IT person because maybe  
7 he'll explain that there's a better way to limit the search  
8 that would make it more efficient so that we can hone in on  
9 what seems -- and prioritize.

10                   But for the other side to say that someone that we  
11 put this huge burden on them and that they don't have time at  
12 this point --

13                   THE COURT: Okay. That's an adjective. Let's see  
14 what we can do about this. My practice in most of these cases  
15 is to get the IT people just to sit together and see if they  
16 can figure out a way to work it out.

17                   Mr. Larkin, is that something that could work?

18                   MR. LARKIN: Well, what I would like to do first  
19 maybe is get -- I have the dates now that the plaintiff wants.  
20 Maybe I should reach out first and have a discussion with our  
21 client directly and at least cut out the middle man and the IT  
22 people there and find out how burdensome this would be and how  
23 much time it would take. Maybe that -- if we go from '06 to  
24 '07 and then we go from '09 -- I think plaintiff had '09 to  
25 the present but I would object to anything after the habeas is

1 concluded. That's the end of the criminal proceeding. The  
2 emails, current emails that concern this case are clearly  
3 communications about any litigation. That's privileged it  
4 seems to me. I wouldn't produce any of that stuff any more  
5 than I would expect Mr. Rudin to produce his communications  
6 with his client to us.

7 MR. RUDIN: I'm not asking for anything between Mr.  
8 Hynes and Mr. Larkin. I'm asking for communications between  
9 Mr. Hynes and third parties that concern Mr. Vecchione. I  
10 mean that's principally what we're interested in, the  
11 continual support from Mr. Vecchione and the communications  
12 with public relations people concerning Mr. Vecchione. This  
13 stuff was directly related to Judge Block emphasized in his  
14 decision on ratification.

15 MR. LARKIN: Up until the time -- Jabbar Collins has  
16 no claims for damages after he gets out of prison. He's no  
17 longer in custody. So the claim ends, the relevance ends in  
18 June -- I think it's -- whatever the date of the -- yes, 2010,  
19 whatever the date that the order was issued.

20 We're not asking for [inaudible]. Your Honor, if I  
21 can -- I'm sorry. I would like to have that discussion first  
22 if I could. I will suggest to our client that we get all of  
23 us on the phone and put our heads together and try to figure  
24 this out. I will tell my client honestly that Your Honor's  
25 inclination would be to direct it. So maybe that will help

1 speed things up.

2 THE COURT: Further you can tell them that I did it  
3 recently in a criminal case and it worked. Ultimately see  
4 what happens.

5 The next issue?

6 MR. RUDIN: Your Honor, in response to what Mr.  
7 Larkin said. We're not claiming damages for incarceration  
8 after the point that Mr. Collins was released. We're seeking  
9 evidence to prove his underlying claims and I think that  
10 that's --

11 THE COURT: I understand your position.

12 MR. RUDIN: The other thing -- part of what we want  
13 to discuss -- sorry. May I have one moment, Your Honor?

14 THE COURT: Sure.

15 [Pause in proceedings.]

16 MR. RUDIN: Your Honor, are you going to order that  
17 the District Attorney's Office that their IT person meets with  
18 all counsel so we can work this out?

19 THE COURT: I think the better way to do it is the  
20 way Mr. Larkin suggested because Mr. Larkin knows that I'm  
21 going to direct it eventually. So I think you might do better  
22 by just --

23 MR. RUDIN: Exactly.

24 THE COURT: a-- persuading his client.

25 MR. LARKIN: That's what I'll suggest to the client

1 so they understand. Let's try to get it done here.

2 So I guess the next category, Your Honor, would be  
3 the public statements. Your Honor, my clear understanding is  
4 that all the press releases were disclosed, all of them. So I  
5 don't -- I mean I can confirm that one last time which I will  
6 do but I don't think that --

7 THE COURT: Okay.

8 MR. LARKIN: I don't think there's anything missing  
9 and then with respect to the privileged documents I believe  
10 that Ms. Krasnow can address that directly.

11 MR. RUDIN: Before we get to the privileged  
12 documents, just -- I mean we -- I'm not expecting Your Honor  
13 to share this view but we operate from the view that it's not  
14 in the interest of the District Attorney's Office considering  
15 the history of this case and the interests in this litigation  
16 to disclose certain material. So we're just trying to be  
17 careful and make sure that they do what they're not terribly  
18 anxious to do. So, for example, what we did receive in  
19 response to our FOIA request and what I'm going to disclose to  
20 Mr. Larkin, send it out tomorrow, is a number of emails from  
21 the public relations, deputy director of public relations from  
22 Mr. Hynes' office to various representatives of the news media  
23 sending out on behalf of Mr. Hynes statements about support  
24 for Mr. Vecchione and statements that actually nothing was  
25 done or wrong in the office and we haven't gotten that. We

1 haven't gotten that in our request for emails. We haven't  
2 gotten that in our request to the DA's Office as public  
3 statements. There's been a continual barrage of statements  
4 from the DA's Office and particularly now that there's a  
5 political campaign concerning the Jabbar Collins case,  
6 concerning -- there was an article about how -- a 48 Hours  
7 special is going to contain comments by Mr. Vecchione on the  
8 Jabbar Collins case. I don't know if that came from their  
9 office or where but there have been all sorts of things in the  
10 press about it and it's hard to believe that there haven't  
11 been emails and there haven't been statements released to the  
12 media by the public relations office or the district attorney  
13 concerning the Jabbar Collins case.

14 MR. LARKIN: Your Honor, when I asked for public  
15 statements what we got was a stack of press releases from the  
16 public relations office, official press releases and we  
17 produced all of them. If the plaintiff is aware through his  
18 own FOIA request of specific emails from specific people it  
19 would help. For instance, tell us who they are, what the  
20 statements were because I'll go back to my client and say  
21 please check with these people or please check with these  
22 other individuals and don't limit the request to just the  
23 official press releases but maybe there was an email or two  
24 sent by an individual. I haven't seen these emails and I  
25 don't know what's in them. Maybe they mirror the public --

1 the official press releases. I don't know but a little bit  
2 more cooperation would have helped in this area.

3 So I appreciate that counsel is going to send me  
4 that stuff and I'll go back to my client again and we'll have  
5 a further discussion. Absolutely.

6 MR. RUDIN: Your Honor, that's why we specifically  
7 asked for the emails from various -- from the two people from  
8 their press office relating to Jabbar Collins. We haven't  
9 gotten a single one.

10 THE COURT: Well, I think now that you've gotten some  
11 information through the FOIA request it will help Mr. Larkin  
12 to get some leverage at this time.

13 MR. RUDIN: Thank you, Your Honor. I hope so.

14 THE COURT: So the last thing is the privileged  
15 documents. I guess, Ms. Krasnow, you can start but I think  
16 the ball is probably in my court too; right?

17 MS. KRASNOW: I [inaudible] everything that I picked  
18 up from Your Honor yesterday morning that was highlighted in  
19 yellow. That was all produced yesterday.

20 THE COURT: Right. I noticed as you told my law  
21 clerk that where you had any doubt you produced it.

22 MS. KRASNOW: Yes.

23 THE COURT: There was one -- the highlighted document  
24 that had an X in it turned out to be a letter from Mr. Rudin.  
25 So I didn't think that that necessarily had to be produced.

1                   Mr. Rudin, what are your questions? Because I can  
2 run up and get the file and I understand you want to see the  
3 more refined privilege log. I suppose that Ms. Krasnow and  
4 Mr. Larkin can explain to you what that looked like. They  
5 were going to talk to the DA's Office as to whether or not  
6 that was something they could disclose but I can give you a  
7 little bit more of my reasoning and what was there and tell  
8 you what you've got and what you didn't get. I think you'll  
9 find that everything that you want you got without any real  
10 objection from the defendants. I don't think the defendants  
11 were attempting to withhold anything that I reasonably thought  
12 that you needed to get but if you want a little more  
13 specificity I can run upstairs and grab the folder. Is that  
14 what you'd like?

15                   MR. RUDIN: I don't know whether it's more efficient  
16 to do it that way or for me to express the concern I have  
17 about certain documents.

18                   THE COURT: Well, I might want to have the documents  
19 with me but -- let me just say generally, and I think  
20 defendant's counsel can fill in the gaps where if my memory  
21 isn't strong enough but I bumped through these documents  
22 several times and several occasions I've had discussions with  
23 defendant's counsel and defendant's counsel decided to -- they  
24 wanted to release other documents to you. So what was here --  
25 what was produced most recently was the -- were the documents

1 that the defendants thought were at the core of their  
2 privilege request. There were many of those documents were  
3 things that you would not be interested in and that you  
4 wouldn't be entitled to. So, for example, questions to prep  
5 witnesses at a trial or memos about what to do in response to  
6 a judge's ruling or notes in the margins on a brief about  
7 legal theories that have nothing to do really with what's  
8 going on in these proceedings here today. There was a lot of  
9 that.

10 There were, however, some documents that you might  
11 want to ask questions about so before I get into anything else  
12 why don't you tell me what it is that you're concerned about  
13 and I'll try to tell you what you got. I suppose before I do  
14 that anything that was at all relevant to Oliva and Santos and  
15 Diaz you got.

16 MR. RUDIN: The first thing you said was questions to  
17 prepare witnesses. It seems to me that any questions to  
18 prepare Oliva, Santos or Diaz given that --

19 THE COURT: You got it all. If there was anything  
20 there relating to them you got it.

21 MR. RUDIN: Then the first --

22 THE COURT: Let me just make sure. Ms. Krasnow, is  
23 that correct?

24 MS. KRASNOW: That's my understanding. I [inaudible]  
25 produced Anything Your Honor [inaudible].

1                   THE COURT: I don't think I missed anything relating  
2 to [inaudible].

3                   MS. KRASNOW: No.

4                   MR. RUDIN: All right. So then the first document  
5 involving the Marshal case, there's a, on the first page,  
6 there's a discussion by Ms. Dornhauser [Ph.] to Dino Amoroso,  
7 the first Assistant DA.

8                   THE COURT: Yes.

9                   MR. RUDIN: The context of the Marshal case and then  
10 there's a bit that's redacted, and then it says, "The judge  
11 stated that he would like to know about our decision as soon  
12 as possible." Was there anything redacted that had to do with  
13 what Judge Korman said to the DA's Office about the status of  
14 the case? That would seem to me to be directly relevant to  
15 why they eventually essentially caved in.

16                   THE COURT: Well, I can go up and go look at the  
17 memo again.

18                   MR. RUDIN: I mean it seems to me anything that  
19 Judge Korman to the District Attorney's Office about his  
20 concerns about the case would be highly germane. And then on  
21 the next page it says, "Pro plea arguments," and then it's all  
22 totally redacted except --

23                   THE COURT: Right.

24                   MR. RUDIN: -- a sentence having to do with concern  
25 about the press [indiscernible] trampling on the defendants'

1 rights, et cetera. But --

2 THE COURT: Okay. All right. This particular  
3 document was a document for which there were two kinds of  
4 privileges asserted and that goes to the heart of what  
5 attorneys do. And that document had to do with the pros and  
6 cons of a plea arrangement and were reflecting the internal  
7 deliberations in the office, but not in a way that I think is  
8 going to help you in the litigation the way you explained it.  
9 However, the part that I did not redact I found did not  
10 constitute the core of what an attorney does as far as work  
11 product goes, so that was out. And also because it dealt with  
12 the press I know that's something that you were interested in.

13 MR. RUDIN: Your Honor, what comes after that  
14 presumably was anti-plea arguments and if there's a discussion  
15 there about what a heinous criminal Jeffrey Marshal was, since  
16 I understand he was suspected in about 15 murders and was  
17 tried in Kings County for three separate murders and one in  
18 Nassau County, and that they think he's a heinous criminal but  
19 they're going to let him out of jail essentially because they  
20 don't want a negative ruling by Judge Korman finding  
21 misconduct Michael Vecchione, then that's directly relevant to  
22 our claim. So if that's in there, and I suspect it is, then I  
23 think that should be disclosed.

24 MR. LARKIN: Your Honor, can I just --

25 THE COURT: Yes.

1 MR. LARKIN: I'm not sure about --

2 THE COURT: Go ahead.

3 MR. LARKIN: I don't have it in front of me, but I  
4 don't even think that's relevant. I mean the issue is whether  
5 there's a practice of allegedly unlawful conduct and who the  
6 defendant is really doesn't matter with respect to that  
7 argument. You know, the issue is what did the DA's Office do  
8 in prior cases and does it exhibit, you know, does it exhibit  
9 deliberate indifference to constitutional violation? It  
10 doesn't matter whether they think the defendant is a good guy,  
11 a bad guy, or a mediocre guy. But it doesn't appear relevant  
12 at all.

13 THE COURT: All right. Since we're talking about  
14 this document, let me just run up to my chambers and grab the  
15 document and then we'll see if there's anything more. But Mr.  
16 Larkin, I think you might also want to explain there was  
17 another part of our discussion there that might be relevant at  
18 this point, that there might be alternative means to obtain  
19 some of this information.

20 MR. LARKIN: Right. I mean, right. If Mr. Rudin  
21 wants to depose Ms. Dornhauser [Ph.], who's the person who  
22 offered the memo, then he can serve a Rule 30 deposition  
23 notice and we'll produce her.

24 MR. RUDIN: Your Honor, we're already taking a great  
25 number of depositions and the City and the defendants have

1 opposed the number of depositions we're taking. And now  
2 because they don't want to disclose a couple of paragraphs in  
3 this letter we have to go to the expense of taking her  
4 deposition to ask her essentially what was in this document?

5 THE COURT: Well, Mr. Rudin, actually that's -- let  
6 me tell you where that came from. If a document is found to  
7 be work product and it's core work product from attorneys'  
8 mental impressions, which I found it was, there then is a  
9 question of whether or not there's a compelling or substantial  
10 need and whether the information is available by alternative.  
11 It was my suggestion that if there were alternative means to  
12 producing that document that that might satisfy your needs, as  
13 well as, or even better than, what that memo is going to  
14 provide because I do think the memo is protected. And I think  
15 the law requires that I find that there are no alternative  
16 means for you to obtain the information.

17 MR. RUDIN: Respectfully, Your Honor, I don't think  
18 there are because Ms. Dornhauser was involved with the other  
19 members of the -- the high level members of the office in  
20 preparing opposition to Mr. Collins' 440 motion and his habeas  
21 petition. So she has an interest on the other side and we're  
22 not going to be able to confront her with any statements in  
23 this document that may be inconsistent with her recollection  
24 which may be consciously or unconsciously self-serving.

25 THE COURT: Well, she might refresh her recollection

1 before she's deposed as well.

2 MR. RUDIN: No, but then we should get the document  
3 on that basis. I mean I don't understand why this document  
4 would be --

5 THE COURT: All right. Let me get the document.

6 [Pause in proceedings.]

7 MS. ROSENBLATT: Hi Arthur, this is Terri. Can I  
8 ask a quick question?

9 MR. RUDIN: Are we still on the record?

10 MR. LARKIN: Sure. What's up?

11 MS. ROSENBLATT: So I see that there's --

12 MR. RUDIN: We may still be on the record.

13 MS. ROSENBLATT: That's okay. I think this is not  
14 confidential.

15 MR. RUDIN: Okay.

16 MS. ROSENBLATT: I see that there are Bates numbers  
17 on the bottom of the privileged documents that you produced.  
18 Do those numbers correspond with the privilege log or are  
19 those new Bates numbers?

20 MR. LARKIN: Those are new Bates numbers.

21 MS. ROSENBLATT: All right. Thank you.

22 MR. LARKIN: I'll have Elizabeth confirm that.

23 She's going to come right back in.

24 MS. ROSENBLATT: Okay.

25 [Pause in proceedings.]

1                   THE COURT: All right. I'm back. All right. So  
2 now, Mr. Rudin, let me just start by saying I spent a long  
3 time on this particular memorandum. It's my ruling that it is  
4 core to your work product and may well be part of the  
5 deliberative process of privilege. It reflects internal  
6 deliberations about the hearing that is ongoing and about a  
7 decision that the office had to make. As you had probably  
8 guessed, where there are arguments pro and con for doing  
9 something, the arguments contain speculation as to what a  
10 judge is doing. Much of it is speculation. Much of it is a  
11 what if. Much of it is well, the argument on the one hand we  
12 should do this, on the other hand we should do that. A lot of  
13 that also has to do with strategy and assessment of the  
14 strength and weakness of, you know, the opposing side.

15                   So now tell me what it is that you think that you  
16 should get that you haven't gotten.

17                   MR. RUDIN: Well, first of all, if there's any  
18 expression as a con for agreeing to a deal that Jeffrey  
19 Marshal [inaudible] --

20                   THE COURT: I'm sorry? Jeffrey Marshal's?

21                   MR. RUDIN: Is a really bad guy, I think that that  
22 should be disclosed because that would show the extent that  
23 the lawyer could go to protect Mr. Vecchione of any  
24 consequence for his misconduct. I mean here on the one hand  
25 they're acknowledging that a potential public relations

1 debacle trampling on the defendant's rights will be  
2 castigated. And having defendant plead guilty may short  
3 circuit any negative publicity. But on the other hand,  
4 they're aware that -- the office at least believes that this  
5 is a really, really bad criminal who's a multi murderer. And  
6 if they're willing to agree to this deal, to essentially a  
7 time served plea, then I think that speaks volumes about the  
8 extent to which Mr. Hynes and his executive staff are willing  
9 to go to protect Mr. Vecchione from the consequences of his  
10 actions, and that's exactly what they then did Jabbar Collins  
11 case. And the fact that they all knew that the office was  
12 willing to go to this length to protect Mr. Vecchione is  
13 evidence of the atmosphere of tolerance of his misconduct and  
14 his conduct generally that we're seeking to prove. I think  
15 it's critical.

16                   THE COURT: All right. Well, the defendant was  
17 found guilty, correct?

18                   MR. LARKIN: Yes, Your Honor.

19                   THE COURT: So there was a habeas decision, correct?

20                   MR. LARKIN: Yes, Your Honor.

21                   THE COURT: And at the habeas petition the DA's  
22 Office was defending him because they thought he was guilty,  
23 correct?

24                   MR. LARKIN: Yes. That's correct.

25                   MR. RUDIN: The DA's Office, yes, was trying to

1 defend the conviction.

2 THE COURT: Yes, defend, right, defending against  
3 his habeas to defend the conviction. That's all it says. In  
4 other words, I mean if there's something in there that says we  
5 think he's guilty and that's a con for accepting the plea  
6 agreement --

7 MR. RUDIN: I mean that's self-evident. I don't  
8 mean to interrupt Your Honor.

9 THE COURT: Yes. I mean that's what --

10 MR. RUDIN: That's what it is.

11 THE COURT: That's what it says.

12 MR. RUDIN: He was convicted of a crime. He was  
13 given a sentence. We defended the conviction because we  
14 believed that he was guilty. There's no question about that.

15 THE COURT: It doesn't say this is a heinous  
16 criminal, this is Jeffrey Dahmer again, you know, he's the  
17 second coming of Adolf Hitler. It doesn't say anything like  
18 that. It simply says, you know, on the one hand, the guy's  
19 guilty and, you know, should we do this? Will we win, will we  
20 lose, are we better off by going through his hearing? And if  
21 we win, then we win, if we lose, then we have an appeal. Are  
22 we going to do it in the circuit. That's the kind of analysis  
23 that they have and that I don't think that you're entitled to.  
24 It doesn't really say that this guy is really terrible and it  
25 just makes our skin crawl just to even think about given a

1 plea deal. It doesn't get into that kind of terms. Basically  
2 just self-evident kind of statement that you just heard.

3 MR. RUDIN: Right. And the other thing is on the  
4 pro plea argument, is there any discussion -- it seems to me  
5 it would be relevant if there's a -- and important to us if  
6 there's a discussion about the likelihood that they are going  
7 to lose because they've taken the position throughout the  
8 Collins litigation that Judge Korman never said anything  
9 negative about Mr. Vecchione's testimony and didn't put any --  
10 they never felt any pressure to make a deal and never  
11 understood why the deal happened, but in light of that, you  
12 know -- if they make any comment about the weakness of -- the  
13 problems with Mr. Vecchione's testimony or comments that Judge  
14 Korman made or their concern about any other witness's  
15 testimony tending to show that Mr. Vecchione was not to be  
16 believed, I think that would be highly relevant.

17 THE COURT: If there were any comment about Mr.  
18 Vecchione, you know that you would have gotten it.

19 MR. RUDIN: Thank you.

20 THE COURT: You know, the comments that the Court  
21 make about what will happen, you know, the speculation, it's  
22 not clear to me from reading this how Judge Korman was going  
23 to rule. I think there were some questions about what he was  
24 going to do, but it's not clear to me how he was going to  
25 rule. There were some ifs about what would happen, and if the

1       ifs happened one way, that would be good. On the other hand,  
2       there are some things in this memo that I didn't produce that  
3       would not help you.

4                    MR. RUDIN: Well, then I assume that the other  
5       side's not going to rely on it either.

6                    THE COURT: Well, that's the point. If the other  
7       side relies on it, then it has to be disclosed.

8                    MR. LARKIN: As of now, Your Honor, what we've done  
9       is we produced what the Court directed us to produce and the  
10      rest of it is redacted and we don't intend to use it.

11                  THE COURT: I mean Mr. Larkin, look at Paragraph 2  
12      of the pro plea arguments.

13                  MR. LARKIN: Yes.

14                  THE COURT: Is there anything you -- if I suggest  
15      rather than quote what's there, perhaps that might help Mr.  
16      Rudin a little bit to understand the relatively innocuous  
17      nature of most of the argument?

18                  MR. LARKIN: Yes, sure. Yes, Your Honor.

19                  THE COURT: Okay. So number two, which I didn't  
20      give you, but not because it wasn't -- only because of what I  
21      said. It said that the -- to the extent it talked about how  
22      much of his time the defendant had already served and how much  
23      of that was his present minimum sentence, and to the extent  
24      that he may have served must, if not all, of his present  
25      minimum sentence, would that go in the pro column? That's the

1 kind of thing that's in this memo.

2 MR. RUDIN: I understand. Okay.

3 THE COURT: Okay?

4 MR. RUDIN: If we could move on?

5 THE COURT: Yes, we can move on.

6 MR. RUDIN: On Page 4912, Page 5 of the overall --

7 THE COURT: All right. Let me just say that I don't  
8 have the entire production with me because my secretary is  
9 more efficient than I am and she's actually filed it in the  
10 place that I can't find for things that she didn't think we  
11 were going to need for a little while. So since she leaves at  
12 5 and she has never seen me before with in camera reviews  
13 actually go over the in camera review afterwards with the  
14 parties, she didn't expect that I would need it. So if you  
15 could tell me what it is, I'll try to remember.

16 MR. RUDIN: Analogy of the Jeffrey Marshal time  
17 line. I don't know whether this was part of the --

18 THE COURT: Oh yes, I have that.

19 MR. RUDIN: I don't know if that's part of the  
20 Amoroso memorandum or a separate document.

21 THE COURT: I could tell you that it was produced  
22 interspersed with it. It didn't make a whole lot of sense but  
23 actually it went one page of the Amoroso memorandum, and then  
24 there was the Jeffrey Marshal time line, and then the second  
25 page of the memorandum, and then came the other time line.

1                   MR. RUDIN: On the last page of the time line  
2 someone wrote in Vecchione's opinion, in handwriting,  
3 "Vecchione's opinion about importance of Murphy to jury not  
4 relevant." I don't know who wrote that.

5                   THE COURT: I don't either.

6                   MR. RUDIN: Then underneath that there's something  
7 redacted. I'm assuming that what's redacted doesn't give any  
8 more [inaudible].

9                   THE COURT: Correct. I mean if defense counsel  
10 knows who wrote that, let me know. I can only guess.

11                  MR. RUDIN: That's a problem with a lot of this.  
12 And as we go through it, that's going to be a recurring theme  
13 that we have little -- sometimes we have little words here and  
14 there and we don't know who the author is.

15                  THE COURT: And we discussed that a little bit, but  
16 I think that when you can pick up the phone and call counsel  
17 and just ask them if they know.

18                  MR. RUDIN: Well, all right. Maybe we can discuss  
19 that today. But one other overall issue before I do some more  
20 on the specific documents, that is that if these documents  
21 have been newly Bates stamp and we don't have any way of  
22 matching them up to the privilege log.

23                  MR. LARKIN: Well, I think the log -- I mean can we  
24 match them up? Is there a way to do that? Can we have a  
25 paralegal do that?

1 MS. KRASNOW: I mean we can. It's going to take a  
2 while. They were originally identified by their document ID  
3 in our system.

4 MR. LARKIN: Right.

5 MS. KRASNOW: They had never been given a Bates  
6 number. So when I produced them, I gave them Bates numbers.  
7 In order to match them up, it's going to take a lot of time.

8 MR. LARKIN: There's a few paralegals here in the  
9 room a little busy on some other things, but I mean is there -  
10 -

11 MR. RUDIN: Arthur, can we try to work that out  
12 between ourselves?

13 MR. LARKIN: Sure, let's work it out.

14 MR. RUDIN: All right.

15 MR. LARKIN: That's fine.

16 MR. RUDIN: All right. So anyway, then there's a  
17 document that says at the top, Boyle time line. And then it's  
18 totally redacted except for the handwriting withhold, it looks  
19 like MTW is the term. Maybe that's -- I don't know what those  
20 are.

21 THE COURT: It might be MVD.

22 MR. RUDIN: M -- I'm sorry?

23 THE COURT: I don't have it in front of me. Is it -  
24 - Ms. Krasnow, do you remember is it MVD?

25 MS. KRASNOW: I know the document that Mr. Rudin is

1 referring to but I can't remember what the three letters were.

2 THE COURT: Yes, I can't either.

3 MR. RUDIN: It looks like it may be MW, material  
4 witness, and then -- or material -- I don't know.

5 MS. KRASNOW: I couldn't read the handwriting and it  
6 was highlighted and I produced it, but I don't have it in  
7 front of me, unfortunately.

8 THE COURT: Yes. And I couldn't understand what it  
9 was or read it, but since it looked to be related to something  
10 that you were very interested in and it seemed appropriate to  
11 give it to you, so I gave it to you.

12 MR. RUDIN: I appreciate that, but no context, I  
13 have no idea what it means absent any context.

14 THE COURT: Same.

15 MR. RUDIN: I don't even know who wrote it.

16 THE COURT: Same. I have the same problem.

17 MR. RUDIN: Maybe I could figure it out if I could  
18 see that paragraph. Is there a particular reason why the  
19 defendants don't want to disclose that paragraph?

20 THE COURT: I don't have it in front of me. Ms.  
21 Krasnow, do you remember?

22 MS. KRASNOW: I'm very sorry, I don't. I just went  
23 to go try get everything and my computer is giving me a lot of  
24 problems so I couldn't. I don't have it in front of me right  
25 now. I can't remember what the surrounding notes were.

1                   THE COURT: I can see it in my mind but I just can't  
2 remember. I really don't think there was anything else there  
3 that would even be helpful to you.

4                   MS. KRASNOW: That was my recollection as well, but  
5 unfortunately I can't get it to print right now.

6                   THE COURT: So much of these documents were just  
7 little random notes that people really scribble off at the  
8 last minute. Most of them were -- many of them were  
9 illegible. Some of them didn't seem to be relevant to  
10 anything that you were looking for.

11                  MR. RUDIN: We can't even present this to a witness  
12 and ask if they can identify the handwriting because it's just  
13 a few isolated words. I mean it's --

14                  THE COURT: So call, just call counsel tomorrow and  
15 see if they can figure it out. That's the best that I can do.

16                  MR. LARKIN: Yeah, I mean we do the best we can.

17                  THE COURT: You know, some of them it was easier  
18 because after a while you could recognize people's handwriting  
19 but generally not. So what's the next one?

20                  MR. RUDIN: A handwritten note that says, "Thursday,  
21 review Oliva phone records," and everything else is redacted.

22                  THE COURT: Nothing else was relevant and I just  
23 gave it to you because it said Oliva.

24                  MR. RUDIN: I don't know who that is but I'll ask  
25 Mr. Larkin. There's a document -- well, there's an email by

1 Marie [indiscernible], then on the other side of it there's a  
2 hand -- this is 40935. There's handwriting not redacted. It  
3 says CPL 440.10 motion, and then there's a big chunk redacted,  
4 and then it says Oliva recanted [inaudible]. I don't know  
5 whether that's a reference to what's alleged in the motion or  
6 to some knowledge that they have.

7 MS. KRASNOW: Could you just repeat that last, Oliva  
8 recanted what? Something. I'm sorry, I couldn't hear you.

9 MR. RUDIN: It looks like "Oliva - recanted. Is  
10 this in the record?"

11 THE COURT: Yes. That's the handwritten very black  
12 scribbling, right?

13 MR. RUDIN: Yes.

14 THE COURT: And what do you want to know about it?  
15 Who wrote it? When?

16 MR. RUDIN: Well, yeah, but also is there anything  
17 that gives any more context to this?

18 THE COURT: No.

19 MS. KRASNOW: No.

20 THE COURT: No, there's nothing. There's really --  
21 believe me, if there were, you'd have it.

22 MR. RUDIN: Well, again, if I'm going to show this  
23 document to someone to see if it refreshes their recollection  
24 about what they meant by it, assuming we can identify the  
25 author, it's a little hard to do after the document's

1 redacted. I mean that's just the underlying problem we have.

2 THE COURT: I'm not sure if you say any more that it  
3 would help you any more. It doesn't tell you what the -- I  
4 have no idea what the document was. Ms. Krasnow, do you know  
5 what the document was?

6 MS. KRASNOW: This is difficult for me because I  
7 couldn't print it, but I remember that document and no, I mean  
8 I don't think there was anything in the words around it that  
9 were going to, you know, give any more information either.

10 THE COURT: It doesn't say memo from someone to  
11 someone. It's just -- it looks as though it's just someone's  
12 notepad and some notes taken off that pad.

13 MR. RUDIN: Okay.

14 THE COURT: My guess is, if I were to guess, it's  
15 probably someone working on a legal document who's trying to  
16 figure out what happened in the case.

17 MS. KRASNOW: That was my impression also.

18 THE COURT: You know, maybe somebody working on a  
19 brief or looking at a memo and they just wrote notes to  
20 themselves to try to check things out.

21 MR. RUDIN: All right. Then there's an email from  
22 Marie [indiscernible] to Joseph Ponzi [Ph.], re: possible  
23 additional logs. Defendant Jabbar Collins and it gives the  
24 indictment number. "We're interested in checking the custody  
25 logs for the following people," and then there are names of

1       witnesses. And then underneath that there's a big chunk  
2       that's redacted and I thought maybe that's a responsive email  
3       --

4                   THE COURT: No.

5                   MR. RUDIN: -- from Ponzi to [indiscernible] that  
6       might be significant.

7                   THE COURT: Not that I recall. Ms. Krasnow, do you  
8       have that in front of you by chance?

9                   MS. KRASNOW: No. I'm sorry.

10                  THE COURT: You can't print anything.

11                  MS. KRASNOW: [Inaudible] and I can't. My computer  
12       is not working right now.

13                  MR. RUDIN: There's a district attorney memorandum  
14       to FOIL file from Jonathan Aker dated April 1, 1997, "Response  
15       to [indiscernible] decision of Jabbar Collins, Article 78  
16       FOIL." And then there's a section, "Records previously  
17       claimed not to be in the possession of the DA's Office." And  
18       it notes that the DA's previous responses to FOIL has  
19       consistently been "that certain documents are not in our  
20       possession and that certain documents were then found and made  
21       available to defendants." And then there was the letter to  
22       the probation office from Vecchione concerning Diaz is going  
23       to Puerto Rico. And then there's a huge chunk that's  
24       redacted. It just seems to me that that's more discussion  
25       about Diaz.

1                   THE COURT: No.

2                   MR. RUDIN: No?

3                   THE COURT: No.

4                   MR. RUDIN: All right.

5                   THE COURT: If it had been, you would have had it.

6                   Or Ms. Krasnow, if I missed something and it is about Diaz,  
7 let me know.

8                   MS. KRASNOW: I will. I'll write down the document  
9 number.

10                  THE COURT: I looked at these several times and no,  
11 they're just random thoughts that are interspersed between  
12 other things that have nothing to do with what you need or  
13 should have.

14                  MR. RUDIN: All right. Then I guess with the same -  
15 - there's a note from Tuesday, 3/7/95, which is the day that  
16 Oliva testified, "Malicious fax of planning session. Expect  
17 we will point out Mr. Collins," strike that. "Witness will  
18 point out Mr. Collins."

19                  THE COURT: Right.

20                  MR. RUDIN: Then there's a big chunk that's  
21 redacted. That didn't have to do with Oliva or --

22                  THE COURT: No. That was the only part about Oliva.

23                  MR. RUDIN: See, this is a potentially very  
24 significant document because my understanding is that Mr.  
25 Vecchione has taken the position in the past, the defense may

1 take the position now that there was certain information that  
2 he disclosed to defense counsel that wasn't on the record  
3 anywhere. And this seems to be a handwritten record of  
4 information that was turned over because right underneath that  
5 there's Rosario turned over and put on the record, Jilio [Ph.]  
6 re Angel Santos, Edwin, which is Oliva, sent a letter to the  
7 parole board detailing cooperation in an attempt to relocate  
8 him. And then there's another big chunk that's redacted. So  
9 without the redaction it's hard to question the author of this  
10 document about whether or not it was an effort to note what  
11 the disclosures were so that we could then argue from the lack  
12 of notes here that full disclosures are in fact not made.

13 THE COURT: What page number is that?

14 MR. RUDIN: 4958.

15 THE COURT: 4958. I'll look at it again but I don't  
16 recall that there was anything else. You got everything  
17 related to what you were just discussing.

18 MR. RUDIN: I'm going to be questioning -- if the  
19 witness appears to be going through -- making an effort to  
20 make a contemporaneous record of what's being disclosed, I  
21 don't see how we can fully examine that witness about that  
22 process if we have to work with a document that's so heavily  
23 redacted. I would ask whether or not there's any interest of  
24 the defendants that's so compelling to not disclose this  
25 information even though technically it might be considered

1 attorney work product.

2 THE COURT: And that's the question that I'll be  
3 asking to Ms. Krasnow and Mr. Larkin as well. If you don't  
4 see any harm in turning that page over, just turn it over  
5 completely un-redacted.

6 MS. KRASNOW: Your Honor, I think what might be  
7 productive is if Mr. Rudin continues to have specific issues  
8 with documents like this, if he were to send a letter to  
9 Arthur and I so then we can sit down and review the documents.  
10 And it may be the fact that, you know, we agree that we're  
11 fine removing some of the redactions.

12 THE COURT: Yes. That might be the best way to  
13 proceed. Keep going. I mean so I'm urging, I'll just urge  
14 defendants' counsel if there's no need to redact the rest of  
15 it, just give it all to you.

16 MS. KRASNOW: Yes.

17 MR. RUDIN: If they do that, that's fine. But if  
18 they don't do that, I would ask if Your Honor could take  
19 another look at that document. I don't know what argument I  
20 could make that I didn't just make.

21 THE COURT: Well, I'll take another look at it but  
22 let me know first whether you agree on it.

23 MR. RUDIN: All right. Then there are what appear  
24 to be notes of Vecchione. It's 40969970 which seems to be  
25 explaining events that happened at trial so he's looking

1 backwards in time. "And then I'm sure that we used Oliva  
2 first because he was uncooperative until that night before he  
3 testified and we --" I can't read what it says here.  
4 Something about -- oh, he was concerned of the risk that he'd  
5 go uncooperative again. That's why they used him first.

6 THE COURT: Right.

7 MR. RUDIN: Then there's a big chunk that's  
8 redacted. This appears to be Mr. Vecchione. It seems to me  
9 that that might be highly relevant.

10 THE COURT: I don't think there was anything else  
11 about Oliva there.

12 MR. RUDIN: Your Honor, may I put this on hold just  
13 for a moment to confer with Ms. Rosenblatt?

14 THE COURT: Sure.

15 [Pause in proceedings.]

16 MR. RUDIN: Your Honor?

17 THE COURT: Yes.

18 MR. RUDIN: Yeah, in the original handwritten -- I'm  
19 sorry, in the original privilege log, item 37, undated  
20 handwritten notes by Kings County Assistant DA regarding Oliva  
21 as witness and people against Collins. And then there are  
22 three pages noted. And one of them is 21102. I have that  
23 document. Your Honor ordered it disclosed. 21329, that's the  
24 one that I just referred to that has a chunk that's blacked  
25 out. And 21410, which I don't believe has been disclosed.

1                   THE COURT: 21410? I'm not sure I even know where  
2 that is because I just don't have the file in front of me, so  
3 I'm not sure what it refers to.

4                   MR. RUDIN: That's also referenced in the subsequent  
5 privilege log again in Item 14.

6                   MR. LARKIN: Your Honor, this is Arthur Larkin.  
7 Maybe I could just make a suggestion. I think it would make  
8 sense for us to try to confer about these things rather than  
9 going document by document at this point with the Court. It's  
10 just, you know, it's just -- it would be a better use of  
11 everyone's time --

12                  THE COURT: I agree.

13                  MR. LARKIN: -- if counsel would try to do it first  
14 and then we can bring anything that's left to the Court's  
15 attention.

16                  THE COURT: Yes. And since two of the three of us  
17 don't have the documents in front of us, we can't get much  
18 done tonight.

19                  MR. RUDIN: That gives me an advantage.

20                  THE COURT: Well, actually having more information  
21 is sometimes not a good thing. Sometimes too much information  
22 is harmful. All right. So why don't you do that? How soon  
23 are you going to do that?

24                  MR. RUDIN: We can send a letter to -- well, we can  
25 call Mr. Larkin and Ms. Krasnow tomorrow with our concerns and

1 discuss it and then -- or just send them a letter, one of  
2 those two, by tomorrow.

3 THE COURT: Okay. Again, I think what I was trying  
4 to do, and I think defense counsel as well were trying to put  
5 ourselves in your shoes to figure out what it was that you had  
6 a compelling need for. And obviously, you know, it looks  
7 different from your shoes than it does from mine. So if there  
8 is something there that I overlooked, I'm happy to reconsider.

9 MR. RUDIN: Thank you, Your Honor. So Your Honor,  
10 just to be clear, are defendants agreeing to the -- as to the  
11 documents that they're agreeing to produce, are they agreeing  
12 to the deadlines that are in my letter?

13 THE COURT: Mr. Larkin?

14 MS. KRASNOW: Your Honor, I think for the majority  
15 of the documents, yes. I can sense there's going to be an  
16 issue with the personnel files though given the fact that  
17 there's 50 of them. I can just tell the court and plaintiffs'  
18 counsel that some of the ones I've already reviewed were  
19 extremely voluminous because of wholly unrelated records,  
20 medical records, that are included and some were up to 350  
21 pages. So I don't think that it's going to be possible to get  
22 into other documents we've agreed to produce as well for me to  
23 turn around 50 personnel files by June 1<sup>st</sup>. I think an end of  
24 June deadline is much more realistic for those.

25 MR. RUDIN: But Your Honor, Mr. Hynes' deposition is

1 noticed for June 18<sup>th</sup> which is five weeks from now and we need  
2 these documents before his deposition and we've been trying to  
3 get them since February.

4 MS. KRASNOW: Your Honor, we have been -- I have  
5 been doing the best I can to get documents to plaintiffs'  
6 counsel on a rolling basis as soon as I get them, but 50  
7 personnel files is a very tall order. And I will do my best,  
8 but I cannot turn them around by June 1<sup>st</sup> especially while  
9 continuing to follow up with the multiple other items that  
10 plaintiffs did request.

11 MR. LARKIN: Your Honor, this is Mr. Larkin. I  
12 think we're going to have litigation over Mr. Hynes'  
13 deposition anyway and it may have to just get moved until July  
14 so we can put the documents -- produce all the documents. But  
15 300 plus pages, 50 files is 15,000 pages of stuff that we need  
16 people to review and look through. So June 1<sup>st</sup> is really not -  
17 - it's just not reasonable, but the end of June is.

18 MR. RUDIN: That was the date that Mr. Larkin agreed  
19 to a week ago.

20 MR. LARKIN: I don't ever recall agreeing  
21 specifically to that date for all those personnel files.

22 MR. RUDIN: Had that conversation --

23 MR. LARKIN: You know --

24 MR. RUDIN: -- memorialized in a letter.

25 THE COURT: Well, whatever, at this point it sounds

1 as though it's going to be difficult to do. I believe just  
2 listening to you and hearing all the things that you've done  
3 and reading what you've done, and just doing the small amount  
4 of work that I've done in this case in the last couple of  
5 weeks, that you've all been working really hard. So I don't  
6 think anyone can fault you for not trying to get things done  
7 as quickly as possible. It just may be that you will have to,  
8 and a judge shouldn't be saying this, but that you will have  
9 to extend a couple of the deadlines.

10 MR. RUDIN: Well, you know, Your Honor, the concern  
11 that we have is that, you know, we've been trying to press  
12 this since February and it seems that only recently that the  
13 District Attorney's Office in any event has started the wheels  
14 in motion. So I mean we've been trying to do this for a long  
15 time.

16 THE COURT: I know.

17 MR. RUDIN: And it's very frustrating.

18 THE COURT: Right. But you've got everyone's  
19 attention now and as you can see, you wrote a letter this  
20 morning and we dealt with everything in that letter today. So  
21 I think I'm convinced that at least everyone on this phone  
22 call is doing their best to try to get as much information out  
23 as quickly as possible. And I think we can only do what's  
24 humanly possible. It's a lot of work for -- I understand. I  
25 know it's a lot of work for you and I think it's a lot of work

1 for defendants' counsel. So yes, we'll try to do it. Mr.  
2 Krasnow, you'll do your best but if it can't be done by then,  
3 it wouldn't be a bad idea to find an alternative date for Mr.  
4 Hynes' deposition particularly because there's going to be  
5 some litigation over when it should be taken.

6 MS. KRASNOW: Your Honor, one more suggestion. If  
7 plaintiff's counsel wants to prioritize the personnel files  
8 out of the 50, I'm happy to produce them on a rolling basis  
9 and to start reviewing the ones that he finds the most  
10 important. But I just don't see how I can turn around all 50  
11 by June 1<sup>st</sup>.

12 MR. RUDIN: Well, I --

13 MS. KRASNOW: With also providing him with the other  
14 documents that he wants related to other requests.

15 MR. RUDIN: I appreciate that suggestion. That's a  
16 good idea and I will do that.

17 THE COURT: So is the next big issue that's going to  
18 come up the Hynes deposition?

19 MR. LARKIN: I think so, Your Honor. And what I'd  
20 like to do is have a discussion with plaintiff about witnesses  
21 who we can produce either in lieu of DA Hynes or prior to DA  
22 Hynes' deposition and maybe we'll have some success in  
23 resolving the issue, or maybe not. But I think we ought to at  
24 least exhaust those possibilities before we file any motions.

25 THE COURT: Yes, I'd like you to do that sooner

1 rather than later so that I can get an idea of what your  
2 positions are and try to work it out before, you know, before  
3 the deposition.

4 MR. LARKIN: No, no, of course. Why don't -- let's  
5 see. I think certainly by -- well, how about if we intend to  
6 move for a protective order if we cannot resolve that issue,  
7 could we file that motion by May 31<sup>st</sup>? And I realize that Your  
8 Honor had strongly suggested that we resolve all discovery  
9 disputes by May 31<sup>st</sup>.

10 THE COURT: Yes.

11 MR. LARKIN: With this one, it might be a little bit  
12 more difficult because I'd like to really sit down with the  
13 folks over there and figure out who we can produce that will  
14 have the information that's going to bind the city and bind  
15 the city for purposes of the Monell claim and that may  
16 actually be sufficient in the circumstances here. So I would  
17 like to do that and it may take a little bit of time. Maybe,  
18 you know, May 15<sup>th</sup>. Certainly by May 31<sup>st</sup> we'll know whether we  
19 agree or don't agree and we can make a motion by then if  
20 that's acceptable.

21 MR. RUDIN: Your Honor, we sort of talked of that  
22 before. My Hynes is an essential witness in so many different  
23 ways. We're not just talking about, although it's a very  
24 major point, the issue of discipline, of personnel. But  
25 that's, I mean not to start with that. He's the policy maker.

1 Only he can explain why he had certain policies over a 20 year  
2 period. Not only specific cases but generally why he didn't  
3 have certain procedures in place. And then he was personally  
4 involved at various points in the Collins litigation. He's  
5 personally involved with Mr. Vecchione at many points. There  
6 are a number of cases that Mr. Vecchione prosecuted where Mr.  
7 Hynes was personally involved and we believe was indifferent  
8 to misconduct. There are a whole series of cases in the early  
9 1990's where Mr. Hynes was personally involved including the  
10 Leaker [Ph.] case where he personally ratified that everything  
11 that was done was fine and Mr. Leaker should serve every day  
12 of his prison sentence when he had before him a series of  
13 Brady violations that the Second Circuit ultimately found and  
14 overturned a conviction. There's just so many ways in which  
15 his personal testimony is necessary.

16 And I understand that a number of points Mr. Larkin  
17 has indicated that the city may not dispute that various ADAs  
18 who may have committed misconduct were not disciplined, but  
19 the key issue is going to be why? And the decision has to be  
20 -- ultimately it's the policy maker who makes that decision.  
21 I mean Dino Amoroso as counsel testified that the informal  
22 practice was to go to Mr. Hynes anytime anyone at a high level  
23 thought that there might be a need for an investigation about  
24 misconduct by an ADA. Mr. Hynes would personally decide  
25 whether or not there should be an investigation and then he

1 would personally decide on whether or not there should be any  
2 discipline so that Hynes is directly involved. And there's  
3 just no way that we're going to agree to voluntarily to accept  
4 the testimony of some lower level person instead of that of  
5 Mr. Hynes. It goes far beyond a discipline issue, although  
6 even as a discipline issue, we would want Mr. Hynes. So  
7 there's no -- we've discussed this at length. Mr. Larkin and  
8 I have discussed it. We've discussed it in a previous  
9 conference with the Court. And I just think that if they're  
10 going to move to preclude his deposition, then they should  
11 just move. There's no way that we're going to agree on that.  
12 It's too fundamental.

13 THE COURT: What about, I'm sorry, what about the  
14 scope? Is there any possibility of negotiating the scope of  
15 his deposition?

16 MR. LARKIN: The answer to that clearly, Your Honor,  
17 is if we produce a series of witnesses before Mr. Hynes is  
18 deposed and, for example, the chief assistant or the counsel  
19 for the DA and [indiscernible] who's name has been suggested  
20 by my client at least to me, you know, these people can answer  
21 a lot of questions that could substantially shorten the  
22 deposition. And we suggested that plaintiff ought to take  
23 those depositions first, and then to the extent there are  
24 areas left over where only the district attorney can answer  
25 the question, maybe we have to produce him at that point, but

1 it doesn't make -- what plaintiff has done is he served  
2 notices for a couple of individual fact witnesses and then ADA  
3 Vecchione and DA Hynes before requesting any other policy  
4 maker. So the record as it stands now is plaintiff wants DA  
5 Hynes before he takes anybody else about any policies or  
6 practices at the DA's Office. And I think that that's the  
7 case as counsel -- directly the opposite approach where  
8 whenever a policy maker is sought to be deposed, you get his  
9 staff first. Then to the extent there are matters left over,  
10 you get the policy maker. And there's plenty of case law on  
11 that.

12 MR. RUDIN: But I just explained that I already took  
13 Gino Amoroso's deposition in another case. He said that he  
14 knew of every instance in which there was any discipline or  
15 investigation of discipline between 1990 and 2005 and that the  
16 informal practice was for Mr. Hynes to decide in every case  
17 whether or not to look into or to impose discipline.

18 MR. LARKIN: So you have the answer.

19 MR. RUDIN: No, I don't have the answers on why Mr.  
20 Hynes didn't look into certain cases where he was personally  
21 familiar and aware from questions in the office or appellate  
22 decisions. I don't have an answer. Only --

23 MR. LARKIN: If Mr. Amoroso -- first of all, I don't  
24 have Mr. Amoroso's deposition in front of me, but presumably  
25 he would know the reasons why because they were communicated

1 to him. If they were, then perhaps that witness or another  
2 witness can explain what the reasons were, and that's the end  
3 of it to have the information you need. You don't need to  
4 embarrass the district attorney, or try to embarrass him.  
5 That's what's really going on here.

6 MR. RUDIN: Oh, please.

7 MR. LARKIN: No, please Joel, please. You know,  
8 that's the reason why plaintiff has noticed the district  
9 attorney first without even asking for any other witness.

10 MR. RUDIN: He'll be about the tenth or eleventh  
11 witness.

12 THE COURT: All right. Let me just jump in here  
13 because it is getting late. It sounds to me -- now, I'm not  
14 making any rulings at this point, but having dealt with other  
15 -- going back to Giuliani and up through Spitzer, I've dealt  
16 with issues like this before and I'm sure you all have. The  
17 way it usually shakes out is what you both are saying.  
18 Usually you try to see what's necessary to be proven through  
19 this particular witness and then whether or not there are any  
20 alternative witnesses who can limit the scope beforehand, or  
21 at least provide some kind of context before taking that  
22 decision maker's deposition. If that's going to be the way  
23 this is going to shake out, and Mr. Hynes is going to have to  
24 be deposed at some point, it seems to me the issue will likely  
25 be what the scope of his deposition should be and whether or

1 not there are other witnesses who ought to be deposed  
2 beforehand. Is that something that is worth your spending,  
3 you know, 20 minutes talking about tomorrow before you brief  
4 the issues?

5 MR. RUDIN: Well, I'm happy to talk to Mr. Larkin  
6 and go through that process and maybe after speaking to his  
7 clients his present a perspective that hasn't been presented  
8 before that will open my eyes to it. But based on the  
9 extensive discovery that I conducted in the [indiscernible]  
10 litigation, I also took the deposition of the chief of  
11 investigation, Dennis Hawkins. I took Amoroso. I got  
12 document discovery. With respect to discipline, that the  
13 entire process centered around the district attorney  
14 personally. And I don't see how we could be required to  
15 accept hearsay from Dino Amoroso or any other witness about  
16 what he was told by Mr. Hynes about why Mr. Hynes was not  
17 going to look into a particular case.

18 THE COURT: But that's not what I'm saying actually  
19 though. It's saying that is it possible that assuming that  
20 the ruling will likely be, or may well be, that you're  
21 entitled to depose the district attorney, that you could  
22 depose others first before you depose him and then that would  
23 help determine the scope of his deposition, not that it  
24 necessarily would obviate the need to ask him questions about  
25 hearsay statements, but that it would at least provide a

1 context and help focus the questions and minimize the time he  
2 would have to devote.

3 MR. RUDIN: I could respond to that in two ways,  
4 Your Honor. First of all, we've been trying to get in  
5 discovery the identity of any individuals who were responsible  
6 for the disciplinary process, if one existed, at the DA's  
7 Office between 1990 and 2010 concerning ADAs suspected of  
8 having been involved in misconduct in prosecuting criminal  
9 cases, and we don't have a response to that yet. I can't  
10 recall now whether defense counsel's agreed to provide it. I  
11 want to believe so.

12 And the second thing is that I had a discussion the  
13 other day with Mr. Larkin where he explained that there's now  
14 a process where there are a group of people, eight or nine  
15 people on a committee, that reviews potential disciplinary  
16 issues regarding ADAs. And my recollection is that that  
17 committee was not publicly announced in that forum until 2011  
18 after we filed this lawsuit. And Mr. Larkin suggested that we  
19 might depose individuals on that committee. And maybe he  
20 wasn't aware at the time when this committee was formed, but  
21 obviously our deposing individuals on some committee that was  
22 formed after the fact is not a substitute to taking the  
23 district attorney's deposition.

24 MR. LARKIN: Your Honor?

25 THE COURT: Yes.

1                   MR. LARKIN: I think the Court is right. I think at  
2 this point it's already ten to 7. We've been on the phone for  
3 two hours. I think that plaintiff ought to spell out very  
4 clearly and specifically what areas he intends to cover with  
5 the district attorney or with our office and what areas  
6 witnesses are needed for, and we will find the appropriate  
7 people to testify about the information so the plaintiff has  
8 what he needs to prove a case or not prove a case. And to the  
9 extent there are areas left over, we'll either agree to  
10 produce the DA or we'll make a motion. But I think if all the  
11 cases say the same thing that the Court is saying, you usually  
12 exhaust the alternatives before you get the policy maker in a  
13 case like this. And we're willing to have that discussion but  
14 I just need to know what areas counsel wants to cover, and I  
15 can speak to my client about it.

16                   So what I'm saying, I guess, Your Honor, look, I  
17 mean I don't think it would be unreasonable for us to make a  
18 motion on or before the 31<sup>st</sup>. I think that's -- it would give  
19 us time to explore this. And I think that's what the Court is  
20 suggesting that we do.

21                   THE COURT: Mr. Rudin, would that be helpful?

22                   MR. RUDIN: I don't think it's going to be -- I  
23 don't think it'll be a helpful process because they want us to  
24 take depositions from people that we don't want to depose.  
25 You know, I don't have any interest in deposing someone who

1 doesn't have knowledge about why Mr. -- I mean doesn't have  
2 Mr. Hynes' own knowledge about why he did or did not do  
3 certain things. It's hearsay. And after that we're going to  
4 need Mr. Hynes anyway.

5 THE COURT: All right. So you're saying that only  
6 Mr. Hynes can discuss these decisions because he's the final  
7 decision maker, everybody went to him?

8 MR. RUDIN: That's right. That was their informal  
9 procedure. But on top of that, he was personally involved in  
10 so many of these cases involving Vecchione and involving other  
11 findings of misconduct by courts. There were all sorts of  
12 practices and procedures that we've been questioning witnesses  
13 about concerning misuse of material witness orders, misuse of  
14 the subpoena process, coercion of witnesses that we need to  
15 question Mr. Hynes about.

16 MR. LARKIN: Your Honor, I'll give the Court an  
17 example. With respect to the Leaker case, obviously DA Hynes  
18 did not personally interview witnesses, personally review the  
19 file, and personally sit down with all the individuals who  
20 gave information to the DA's Office. He had a staff to do  
21 that for him, and the staff did it, prepared the letter, and  
22 the district attorney, after meeting with his staff, his  
23 senior staff, which signed the letter, okay, based on  
24 information provided to him. He's an elected official. He  
25 doesn't personally review cases in the way that Mr. Rudin is

1 suggesting that he does. And so this is why I'm asking for a  
2 little more information about what area, specific area now,  
3 specific areas, specific cases that he wants to cover and we  
4 can get the witnesses who have the information. The fact that  
5 Mr. Rudin is so, you know, anxious to depose the DA, it should  
6 be obvious the reasons why. Okay? It has nothing to do with  
7 the legitimate needs of the case. The legitimate needs of the  
8 case can be satisfied with other witnesses. And I think we  
9 ought to explore those alternatives in good faith before we  
10 litigate this issue.

11 THE COURT: Mr. Rudin, why don't you -- it's going  
12 to be necessary for the briefing anyway, so why don't you --  
13 can you provide a list of the areas that you want to go into  
14 with the district attorney? And then Mr. Larkin will have the  
15 opportunity to present to you before he presents it in a  
16 brief, and you'll know what his arguments are, the other  
17 individuals he believes would be worthwhile to depose before  
18 or in lieu of Mr. Hynes, and then you all can brief the issue.

19 MR. RUDIN: That's fine, Your Honor.

20 THE COURT: Okay. At least that way it'll refine  
21 the issue before you get to me.

22 Is there any way to get a brief on this say by the  
23 end of next week or the beginning of the following week?

24 MR. LARKIN: Your Honor, the only concern -- I've  
25 got reply papers on another motion --

1                   THE COURT: Okay.

2                   MR. LARKIN: -- due on the 28<sup>th</sup>. It's a summary  
3 judgment motion. That's one of the reasons I suggested the  
4 end of the week, the 31<sup>st</sup>.

5                   THE COURT: The 31<sup>st</sup>. Okay. All right. I don't  
6 think it's going to be a complicated motion ultimately but you  
7 never know.

8                   MR. LARKIN: Let me see if I can get a little more  
9 time on the reply papers.

10                  THE COURT: Okay.

11                  MR. LARKIN: Maybe I could file -- we could file our  
12 motion on the 24<sup>th</sup>.

13                  THE COURT: Okay. That would be great. I just  
14 would love to keep to that May 31<sup>st</sup> deadline. I think it would  
15 really be helpful.

16                  MR. LARKIN: All right, Your Honor. So then permit  
17 me to contact my opposing counsel in the other case. It's  
18 actually Ted Thompson's office who is --

19                  THE COURT: Okay.

20                  MR. LARKIN: -- running against DA Hynes in the  
21 primary, so --

22                  THE COURT: Don't tell him why you're doing it.

23                  MR. LARKIN: I better not tell him the reason.

24                  THE COURT: Okay.

25                  MR. LARKIN: I'll get a no.

1                   THE COURT: Okay. Remember, you're on the record  
2 here.

3                   MR. LARKIN: Yes, exactly.

4                   THE COURT: Okay.

5                   MR. LARKIN: We'll seal that part of the transcript  
6 anyway. No. Let me see if I can do that.

7                   THE COURT: Okay. So we're going to aim for the 24<sup>th</sup>  
8 for that brief if possible.

9                   MR. LARKIN: Yes, Your Honor, but we need that list  
10 from Mr. Rudin as soon as possible, so maybe we can get that  
11 by Monday morning?

12                  THE COURT: Monday. Yes, Monday.

13                  MR. LARKIN: Thank you.

14                  THE COURT: And earlier if you can do it, but I  
15 think Monday is about all we can ask reasonably. All right.  
16 So Mr. Rudin, have we dealt with all your issues today except  
17 -- well everything, we haven't resolved everything but we've  
18 at least addressed them?

19                  MR. RUDIN: We haven't talked about the Knicks.

20                  THE COURT: That is a subject that I'd rather not  
21 discuss.

22                  MR. RUDIN: Okay. Yes, Your Honor.

23                  THE COURT: Okay.

24                  MR. LARKIN: Okay. I'm sorry, Your Honor, I think  
25 my co-counsel has one more --

1 MS. KRASNOW: I just have one more thing that's very  
2 brief, Your Honor.

3 THE COURT: Okay.

4 MS. KRASNOW: I had agreed previously to produce the  
5 emails by tomorrow for the other individuals for whom the DA's  
6 Office has collected email I understand including DA Hynes.  
7 But now I understand from plaintiff's counsel that he's  
8 providing us with emails he received in response to his FOIL  
9 request and that they've been placed in the mail. So I would  
10 just ask until Monday to do that so that I can --

11 THE COURT: Yes.

12 MS. KRASNOW: -- see what he already has --

13 THE COURT: Right.

14 MS. KRASNOW: -- so I'm not doubling my efforts  
15 here.

16 THE COURT: That sounds reasonable. Any objection,  
17 Mr. Rudin?

18 MR. RUDIN: Well, it's about six or seven emails  
19 where the deputy chief of public information is sending around  
20 statements on behalf of Mr. Hynes. I don't understand what  
21 the downside is. If they were already prepared to produce it,  
22 why they can't just produce it?

23 MR. LARKIN: I thought I understood plaintiff to say  
24 he had emails from DA Hynes earlier in the call. That was the  
25 representation that was made.

1                   MR. RUDIN: I could be wrong, but I think they're  
2 emails from the public information office setting forth Mr.  
3 Hynes' position about matters relating to --

4                   MS. KRASNOW: I'm just asking to see what you  
5 already have before I go through the extra effort of briefing  
6 it. That's all I'm asking. And so if it's already been  
7 placed in the mail, then I'll get it on Saturday and then I  
8 can compare on Monday just to make sure.

9                   THE COURT: Okay. And what you're also saying is  
10 that will help you get those personnel files faster.

11                   MR. LARKIN: Exactly.

12                   THE COURT: Okay. So what do we need to do next as  
13 far as the court conferences? I'll hear from you on the  
14 privilege logs if there's still a problem.

15                   MR. LARKIN: Right. And I think, Your Honor, maybe  
16 -- I don't know if the Court wants to set a date for any  
17 argument on a protective order concerning the district  
18 attorney.

19                   THE COURT: Sure. Mr. Rudin, if you get the brief  
20 on the 24<sup>th</sup>, letter brief, when can you turn it around by?

21                   MR. RUDIN: Probably a week.

22                   THE COURT: I think you know what it's going to say.

23                   MR. RUDIN: I guess by the 29<sup>th</sup>?

24                   THE COURT: Okay. All right.

25                   MR. RUDIN: The close of, you know, the end of the

1 29<sup>th</sup>.

2 THE COURT: Sure. Do you need a reply, Mr. Larkin?

3 MR. LARKIN: I'd like an opportunity, Your Honor,  
4 yes. Right. We have two depositions on the 30<sup>th</sup> and 31<sup>st</sup> so  
5 how about June 3<sup>rd</sup>? Excuse me, June 5<sup>th</sup>. That's a Wednesday.

6 THE COURT: That seems to take it way too far.

7 MR. LARKIN: Maybe Monday, June 3<sup>rd</sup>?

8 THE COURT: If you can do that, that would be great.

9 MR. LARKIN: How about -- that's right, Elizabeth is  
10 on vacation that whole week, my co-counsel is. So I'm going  
11 to be wandering around.

12 THE COURT: The week of the 3<sup>rd</sup> or the week before?

13 MS. KRASNOW: The week of the 3<sup>rd</sup>, Your Honor, I'm  
14 out of the office and we also now I believe have another  
15 deposition scheduled that week.

16 MR. LARKIN: Yeah, maybe Tuesday the 4<sup>th</sup>, Your Honor?

17 THE COURT: Okay.

18 MR. LARKIN: Okay.

19 THE COURT: So then the argument, I wonder can we do  
20 -- I don't know how fast that can turn it around, but we can  
21 shoot for the 7<sup>th</sup> and we're only a week behind schedule.

22 MR. LARKIN: Yeah, Elizabeth won't be there but  
23 that's okay.

24 THE COURT: Do you need to be there? Do you want to  
25 be there?

1 MR. LARKIN: Yes, Your Honor, I can be there.

2 THE COURT: Well --

3 MR. LARKIN: Elizabeth wants to be there. She's  
4 heavily invested in this case, believe me. I mean maybe the  
5 10<sup>th</sup>. Does Monday the 10<sup>th</sup> work?

6 MS. KRASNOW: Yes.

7 MR. LARKIN: Monday the 10<sup>th</sup> works, Your Honor.

8 MR. RUDIN: I won't be here on Monday the 10<sup>th</sup>.

9 MS. KRASNOW: Your Honor --

10 MR. RUDIN: A hearing in court on the 11<sup>th</sup>.

11 THE COURT: I have arraignments after that. June is  
12 impossible for me. You're not going to see much of me in  
13 June, so --

14 MR. RUDIN: With all due respect, I don't understand  
15 why Mr. Larkin can't argue this himself. I know Ms. Krasnow  
16 adds to the team but if Ms. Rosenblatt wasn't here, I wouldn't  
17 not argue the case because --

18 THE COURT: Yes, I understand what you're saying.

19 MR. LARKIN: If June 7<sup>th</sup> is the only date that works,  
20 Your Honor, then we'll make it work.

21 THE COURT: Yes. And Mr. Rudin, you're definitely  
22 out on the 10<sup>th</sup>?

23 MR. RUDIN: Yes, I have to be out of town with my  
24 son.

25 THE COURT: Okay. All right. So we'll do it for

1 the 7<sup>th</sup>.

2 MR. LARKIN: I mean --

3 MR. RUDIN: Are we doing that in court?

4 THE COURT: Would you rather do it by phone?

5 MR. RUDIN: Sort of rather do it in court. I think  
6 it's going to be --

7 THE COURT: I think so too.

8 MR. LARKIN: Your Honor, how about the following  
9 week? I mean I don't want to belabor this. You know, I  
10 understand Mr. Rudin has got personal obligations. We all do.  
11 But my co-counsel is going to be out that whole week. She's  
12 got longstanding vacation plans. You know, I mean is there  
13 any day, the 12<sup>th</sup>, 13<sup>th</sup> -- well, the 13<sup>th</sup> is no good for me, but  
14 the 14<sup>th</sup> --

15 THE COURT: The 14<sup>th</sup> is no good.

16 MR. LARKIN: -- 12<sup>th</sup>?

17 THE COURT: I could possibly do the 12<sup>th</sup>.

18 MR. LARKIN: The 12<sup>th</sup>, the whole day is open for us.

19 MS. KRASNOW: Yes.

20 MR. RUDIN: Judge, it's up to you. I mean it seems  
21 to me that there's no good reason not to do this on the 7<sup>th</sup> and  
22 it's just more delay, but --

23 MR. LARKIN: There is a good reason. My co-counsel  
24 can't be there. With respect, Your Honor, I just suggest that  
25 that is a good reason. You know, the whole day the 12<sup>th</sup> is

1 good for us, whole day.

2 THE COURT: Right. I'm just trying to find a time  
3 when I can actually do it. I've already got lunch filled.  
4 Let's see, possibly -- all right, I'll squeeze you in at 2:15.

5 MS. KRASNOW: Thank you very much, Your Honor.

6 THE COURT: You're welcome.

7 MR. LARKIN: Your Honor, thank you very much.

8 THE COURT: It may be that there's not much --

9 MR. LARKIN: I do appreciate it.

10 THE COURT: Sure.

11 MR. LARKIN: Thank you very much.

12 THE COURT: I'm happy to do it. All right. So it  
13 may be that your papers will say everything and you won't  
14 really need to say much more on the argument. Have confidence  
15 of what you write.

16 MR. LARKIN: It may be.

17 THE COURT: Okay. Mr. Rudin, anything else we  
18 haven't discussed?

19 MR. RUDIN: Your Honor, I appreciate you staying so  
20 late.

21 THE COURT: And Mr. Larkin, anything else?

22 MR. LARKIN: No, Your Honor. Thank you very much  
23 for your time and thank you --

24 MS. KRASNOW: Thank you, Your Honor.

25 THE COURT: All right. So just to be clear on this,

1 other than this one issue and what we've talked about here  
2 today, there are no other outstanding disputes now that you  
3 could think of or that you're expecting on the horizon?

4 MR. RUDIN: Well, the only thing that seems to me is  
5 on the horizon is privilege objections on the other side. As  
6 we get into production of additional emails or --

7 THE COURT: Okay.

8 MR. RUDIN: -- production of materials and other  
9 case files, they may have privilege objections.

10 THE COURT: But again, we don't know yet. All  
11 right. So that's it then. All right. Thank you very much.  
12 Have a nice evening.

13 MR. RUDIN: Thank you, Your Honor. Thank you.

14 [Proceedings ended at 7:02 p.m.]

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1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.



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6 Shari Riemer

7 Dated: June 5, 2013

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